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MAY 05 2011

CITY OF AUSTIN

DOWE D. GULLATT

dgullatt@coatsrose.com

Direct Dial  
512.541.3595

May 5, 2011

Via Electronic Mail & US Mail

Ms. Susan Walker  
Planner II, PDRD  
Board of Adjustment  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767

RE: C15-2011-0038: Request for Reconsideration

Dear Ms. Walker,

This firm represents Ms. Leslie Rosenstein, the appellant in the above-referenced case before the Board of Adjustment ("BoA"). Please consider this correspondence a request for reconsideration pursuant to Article 4.(G) of the Rules of Procedure for the Board of Adjustment and Sign Review Board ("Rules").

The basis of Ms. Rosenstein's request for reconsideration is the BoA's procedural error during the April 27<sup>th</sup> hearing. The BoA concurrently heard two appeals, Ms. Rosenstein's appeal and that of Ms. Cynthia B. Keohane on behalf of the Allandale Neighborhood Association (C15-2011-0038). Despite Chair Heldenfels' procedurally correct statements that each case would be considered on its own merits and the BoA would take action on each case, separately, such did not occur. In fact, the record shows that the single action taken by the BoA was not in relation to either case, specifically, but a general action taken in what was purported to be a city-wide decision based on policy moreso than the facts of either case.

Moreover, during the hearing, many facts of Ms. Rosenstein's case were mis-stated while wholly irrelevant facts and policy considerations were discussed and considered in the BoA decision-making process. Upon reconsideration, the BoA's procedural error may be remedied following a clarification of the facts of Ms. Rosenstein's appeal by BoA action on Ms. Rosenstein's case alone on the issue of PDRD Director Greg Guernsey's March 12, 2011 land use determination that, "[a] rented residential structure, even one that is rented for a short period of time, is not classified as a Hotel/Motel land use under the existing City Land Use Code" and is "still classified as a single family residential use."

1717 W. 6<sup>th</sup> Street, Suite 420 Austin, Texas 78703

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As this request for reconsideration has been timely filed (within 10 days of the April 27, 2011 hearing), I request that you place this matter on the agenda of the BoA's next regular meeting pursuant to Article 4.(G)(3) of the Rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Dowe D. Gullatt". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Dowe D. Gullatt

CC: Ms. Leslie Rosenstein

Leslie D. Rosenstein  
6619 Argentia Rd.  
Austin, TX 78757

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**MAY 05 2011**

**CITY OF AUSTIN**

Attn: Ms. Susan Walker  
Board of Adjustment  
P.O. Box 1088  
Austin, TX 78767-1088

April 28, 2011

Re: C15-2011-0038

Dear Members of the Board of Adjustment:

I appreciated the attentiveness and thoughtful consideration of my appeal regarding the Halcyon House being operated at 6621 Argentia Rd. However, I believe the following errors occurred, which warrant a reconsideration:

1. There were two appeals filed on the issue, one by me and one by the Allandale Neighborhood Association. However, there was only one vote and it was not stated on which appeal the vote was made. The Chair stated at the beginning of the hearing that you would, "have a separate vote for each case" again stating that, "and then we're going to vote separately," with another Board members adding, "motion and vote separately."
2. The Board voted on the appeal based on its application to the entire city as advised by the Board's council. However, the entire city was not given notice of the appeal. Rather, only properties within 500 feet of 6621 (Halcyon House) and 6619 Argentia Rd. (my home) were sent notification and the opportunity to comment. Additionally, there were signs announcing the hearing posted only at 6619 and 6621 Argentia Rd.
3. During deliberations by the Board, Board's council discontinued Mr. von Ohlen's discussion of the logic of collection of HOT as indicating that a commercial operation is occurring. Council instructed the Board to discuss only the issue being appealed and not the issue of HOT. However, Mr. von Ohlen was not discussing the issue of HOT per se, but was rather making a comment about the commercial nature of Halcyon House, which was directly relevant to the appealed issue (i.e., whether operation of a Halcyon House is an acceptable use for an SF-2 zoned property).
4. Facts were misstated during deliberation. These included facts about other properties used as examples of the various layers of complexity as well as facts about City Code and its application. Regarding the former, one property mentioned was described as an owner-occupied property, more like a Bed and Breakfast, which I stated in my presentation and my appeal is a documented allowed use in SF-2 assuming it is licensed as such. Regarding the latter, it was stated that the IRC, not the IBC, applies to definitions of transient given that the appeal applied to a residential structure. However, my appeal was based on the point that the Halcyon House is being operated commercially, and not as a residence. Therefore, the IRB should apply when determining the cut off for transient. Moreover, the IRC states that, "Where terms are not defined in this code such terms shall have meanings ascribed to them as in other code publications of the International Code Council." (IRC R201.3 Terms defined in other codes). Therefore, the IBC definition of transient (i.e., 30 days) applies to structures covered by the IRC as well.
5. In addition, it was noted by at least one Board member as well as the attorney for HomeAway, that Title 25 of the Code of the City of Austin describes a Mobile Home Residential as the use of a site for occupancy of mobile homes on a weekly or longer basis, arguing that one week could,

therefore, be used as the demarcation of transient, nonresidential. Even if one accepts this argument, as stated repeatedly in my presentation and as documented in the materials provided to the Board, Halcyon House offers a minimum 2-night stay and has had many groups staying for less than one week during the past two years.

6. The Chair based her vote on her opinion that the appealed issue should be a policy decision by the City Council. However, the Board was charged with voting on the appeal itself. My appeal was an appeal to overturn the Planning Director's interpretation that "...the frequent rental of a single family home for short durations..." is classified as a single-family residential use.
7. While I appreciated the motion that was made, it was broader in scope than the appeal itself and did include new policies not already included in the Code. The inclusion of completely new policy appeared to impact Board member's votes as indicated by their statements during deliberations and voting.

To clarify, the house at 6621 Argentia Rd, next door to my home at 6619 Argentia Rd., is being used for repeated, two-night stays. As I outlined in my presentation, there are statutes and code that define transient as being less than thirty days; Board members cited additional code noting a one-week cut off for stays in mobile home residential structures; and City Code 1-1-3, which should be applied to the entire City Code, states that Words and Phrases shall be read in context and construed according to the rules of grammar and common usage. On all these points, the two-night minimum stay being applied to 6621 Argentia Rd. is "transient" and, therefore, not consistent with a permitted use for SF-2 zoned properties.

While Mr. Guernsey has determined that his interpretation applies to the entire City, I wrote my initial letters to Mr. Ott and Mayor Leffingwell requesting enforcement of Code at 6621 Argentia Rd. Mr. Guernsey's interpretation letter, in response, was sent directly to me at 6619 Argentia Rd.. Finally, the addresses listed in my appeal were 6619 and 6621 Argentia Rd. Therefore, the appeal (0038) should be applied to 6621 versus the entire City. Alternatively, if the Board wishes to include the entire City, then all affected properties should be notified, those being all single-family residential properties.

Related, Board members stated that the issue requires a policy decision in that the entire city is involved; however, a new ordinance will not relieve me, the appellant, of the infringement on my rights as a property owner in a SF-2 property surrounded by SF-2 properties. As I stated in my first letter to the mayor and city manager, HomeAway co-founder, Carl Shepherd, was reported to state in an August 4, 2010 article published in the Austin American Statesman, "Neighborhoods should have the right to say how they want these properties to be used going forward, but not retroactively when people have already invested in them in good faith. That's fundamental to the law." In other words, this multi-million dollar company plans to invoke a grandfathering argument, which would entitle the owners of 6621 Argentia (Halcyon House) to continue to operate as they are currently. In spite of Mr. Rusthoven's statement that grandfathering would not apply if the house is "ruled legal, nonconforming," there is nothing in the current discussions of the PDRD staff regarding this classification (see Attached). Overall, then, the Board's decision to defer to the City in establishing a new policy will not alleviate me of the original issue that led to my complaints, the interpretation from Mr. Guernsey, and my appeal to the Board.

In conclusion, I respectfully request that the Board overturn Mr. Guernsey's interpretation of the operation of 6621 Argentia Rd. as single family residential. I request that a motion be put forth that is narrower in scope, does not represent a policy decision with new code, and will have direct and immediate application to 6621 Argentia Rd (e.g., Motion to modify Mr. Guernsey's administrative

decision that residential structures rented for a short period of time are still classified as single family residential uses, clarifying that 6621 Argentinia Rd., by virtue of its being rented repeatedly for a minimum of two nights in a non-owner occupied condition, is not being used in a manner consistent with SF-2 zoning).

Thank you.

Leslie D. Rosenstein

Leslie D. Rosenstein  
6619 Argentia Rd.  
Austin, TX 78757

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**CITY OF AUSTIN**

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Board of Adjustment  
P.O. Box 1088  
Austin, TX 78767-1088

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therefore, be used as the demarcation of transient, nonresidential. Even if one accepts this argument, as stated repeatedly in my presentation and as documented in the materials provided to the Board, Halcyon House offers a minimum 2-night stay and has had many groups staying for less than one week during the past two years.

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decision that residential structures rented for a short period of time are still classified as single family residential uses, clarifying that 6621 Argentinia Rd., by virtue of its being rented repeatedly for a minimum of two nights in a non-owner occupied condition, is not being used in a manner consistent with SF-2 zoning).

Thank you.

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Leslie D. Rosenstein



**CITY OF AUSTIN**  
**Board of Adjustment/Sign Review Board**  
**Decision Sheet**

**DATE:** Wednesday, April 27, 2011

**CASE NUMBER:** C15-2011-0038

<input checked="" type="checkbox"/> Y	Jeff Jack	<b>Motion to Grant Appeal</b>
<input type="checkbox"/> N	Michael Von Ohlen	
<input checked="" type="checkbox"/> Y	Nora Salinas	
<input checked="" type="checkbox"/> Y	Bryan King	<b>2<sup>nd</sup> the Motion</b>
<input type="checkbox"/> N	Leane Heldenfels,	Chairman
<input type="checkbox"/> -	Clarke Hammond,	Vice Chairman
<input type="checkbox"/> N	Heidi Goebel	
<input checked="" type="checkbox"/> Y	Melissa Hawthorne	

**OWNER:** Cynthia B Keohane for Allandale Neighborhood Association

**ADDRESS:** 6621 ARGENTIA RD

**VARIANCE REQUESTED:** The applicant has filed an administrative appeal, requesting an interpretation of whether the Planning and Development Review Department Director's determination that a residential structure rented for a short period of time is classified as single family residential use in correct.

**BOARD'S DECISION:** The public hearing was closed on Board Member Jeff Jack motion to Grant appeal, Board Member Bryan King second on a 4-3 vote (Michael Von Ohlen, Leane Heldenfels, Heidi Goebel nay); Motion failed, **DENIED**.

**FINDING:**

1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations to short term residential rentals; finding that short term residential rentals of 30days or less are more similar to a Motel/Hotel use than to a Residential use; finding that PDRD's decision is contrary to the land use classifications in Chapter 25-2 of the City Codes; hereby reversed and modified to require that the rental of the residential unit for a period of 30 days or less be non-owner occupied property for 5 times or more per year to be treated as Hotel/Motel use rather than a residential use; finding that the Board's interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated; Board's decision will permit uses in character with the uses enumerated for the various zoning districts and it consistent with the objective of the city zoning codes.
2. An appeal of use provisions could clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because:

3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that:

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Susan Walker  
Executive Liaison

  
Leane Heldenfels  
Chairman



## MEMORANDUM

\*\*\*\*\*

TO: Mandy Dealey, Chair, and Members of the Planning Commission Committee on Codes and Ordinances

FROM: Robert Heil, Senior Planner  
Planning and Development Review Department

DATE: April 15, 2011

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RE: Short Term Residential Rentals / Vacation Rentals by Owner

\*\*\*\*\*

This purpose of this memo is to:

- 1) Provide an overview of the current discussions regarding Short Term Residential Rentals (STR's), also known as Vacation Rentals by Owner (VRBO's),
- 2) Present staff's recommendations for proposed changes in City of Austin policies, procedures, and code, and
- 3) Outline the next steps in the process.

### Current Status

The Planning Commission has asked staff to present recommendations regarding the short term rental of residential properties, with the intent of clarifying the legality of this practice in single family residential districts, and mitigating any negative impacts the practice of short term rental may have on the surrounding neighborhoods.

As part of that process, staff has made a use determination. A rented residential structure, even one which is rented for a short period of time, is not classified as a Hotel/Motel land use under the existing City Land Use Code and is still considered as a single family residential use.

Two administrative appeals of this use determination have been made, requesting an interpretation of whether the Neighborhood Planning and Zoning Department's Director's determination that a residential structure rented for a short period of time is classified as single family residential use is correct. These applications are scheduled

to be heard by the Board of Adjustment on April 27th, 2011. The meeting will be held at City Council Chambers, 301 West 2<sup>nd</sup> Street beginning at 6:30 PM. For more information on these appeals you may contact Susan Walker of the Planning and Development Review Department at 512-974-2202 and refer to case numbers C15-2011-0037 and C15-2011-0038.

Throughout this process, the Code Compliance Department and the Austin Police Department have continued to enforce all applicable regulations regarding residential housing, including occupancy limits, noise complaints, and threats to public health and safety.

### **Staff Recommendation**

To help mitigate some of the issues that have arisen around the practice of short term rental of residential property, staff is recommending an approach consisting of three main elements – education, registration and inspection.

Education and Outreach. One of the recommendations of the report of the City Auditor, completed earlier this year, was that the City increase its efforts to educate property owners of the additional responsibilities that come with the decision to rent on a short term basis.

Staff recommends that the City of Austin coordinate with the State Comptroller's office to increase the awareness of the hotel occupancy tax, and to provide ready access to information about effected properties and how property owners can pay this required tax.

Staff further recommends that the City work with the Controller's Office to update the proposed amended hotel occupancy tax state ordinance to clarify that it applies to all properties rented for 30 days or less.

Additionally, staff recommends that the City, with the input from industry representatives, assemble information on best practices for property owners of short term rentals. This information could include, among other things, templates of recommended leases agreements that specifically address noise and parking and other issues along with plain language copies of relevant City ordinances. This information could be made available to property owners and to companies that coordinate the rental and leasing on behalf of property owners.

Registration and Compliance. Any property owner who rents a residential unit for a period 30 days or less is required by state law to pay a 15% hotel occupancy tax. This tax applies to traditional hotels, bed-and-breakfasts, and even to single family homes that are rented 30 days or less. Staff proposes that the City of Austin establish a mandatory registry of all properties subject to this tax.

Requiring all owners who at any time rent out their property for less than 30 days to register with the City will increase compliance with the required hotel occupancy tax, and

help more fully capture those taxes due to the City. The registry could be easily cross-checked with the records of the State Comptrollers office, to identify properties which are being rented for short periods of time, but have not paid the hotel occupancy tax. These owners will then be notified of their oversight and be given an opportunity to voluntarily comply with state law.

Additionally, a registration of short term rental properties, with the name and contact information of the owner, would allow Code Compliance staff to quickly contact the owner in the event of a complaint on their property. While Code Compliance staff and Austin Police would continue to respond to complaints directly, the ability to easily access the property owner will facilitate the resolution of the complaints, and tie ongoing or repeated complaints to a property owner, even if the cited complaints involve different tenants.

Inspection Finally, staff proposes that any property that is rented for 30 days or less, on five or more occasions in one year, be subject to an annual health and safety inspection. This inspection would ensure that the property was being maintained properly and could also include a record of any complaints made against the property.

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#### Next Steps

The Planning Commission Committee on Codes and Ordinances will discuss this topic at their next meeting, Tuesday April 19, 2011, 6:00 PM. at 301 West 2nd Street, City Hall, Conference Room 1029. While this meeting is open to the public, it is not a public hearing. Any member of the public is welcome to attend, but is not guaranteed an opportunity to speak. Written comments are accepted and will part of the formal record, and everyone who wishes to speak on the issue will have an opportunity to do so at the public hearings that will be held in front of the full Planning Commission and then later, City Council.

As previously discussed, two administrative appeals of the use determination will be heard by the Board of Adjustment on April 27th, 2011, 6:30 PM. at City Council Chambers, 301 West 2<sup>nd</sup> Street.

In addition to the Planning Commission, this memo will be distributed to any individual or group who has requested to be kept informed on the issue. A follow-up email to this same list will specifically request feedback and suggestions on the proposed approach.

Throughout this process, staff will be available to meet with interested parties, either individuals or groups, as requested.

Depending on the actions of the Committee on Codes and Ordinances, the item will either undergo further review and come back to the Committee, or it will be forwarded on to the full Planning Commission for consideration and recommendation. The Planning Commission will hold a full public hearing, at which any interested party will be permitted to speak. When the date of this public hearing as been set, notification will be

sent to all community organizations that have registered with the City, and an electronic notification will sent to any individual who has requested to be kept informed via email.

After the public hearing and a recommendation by the Planning Commission, the item will move on to City Council. A public hearing will be set, and then later held, by the City Council. The dates of these actions have not been scheduled, but, as with the public hearing at the Planning Commission, notification of the public hearing at City Council will be sent to all community organizations that have registered with the City, and an electronic notification will sent to any individual who has requested to be kept informed via email.

For additional information, or to provide feedback or comments on this issue, please contact Robert Heil, Senior Planner, Neighborhood Planning and Zoning Department, at 974-2330 or via email at [Robert.Heil@ci.austin.tx.us](mailto:Robert.Heil@ci.austin.tx.us).

---



## MEMORANDUM

**To:** Leane Heldenfels, Chair and Members of the Board of Adjustment

**From:** Jerry Rusthoven, AICP, Manager of Current Planning  
Planning and Development Review Department

**Date:** April 21, 2011

**Subject:** An Administrative Appeal Request Case Nos. C15-2011-0037 and C15-2011-0038  
by Cynthia B. Keohane for Allendale Neighborhood Association and Leslie  
Rosenstein

This statement is in response to the March 31, 2011 letters from Leslie Rosenstein and Cynthia B. Keohane, on behalf of the Allendale Neighborhood Association, who have requested a Board of Adjustment appeal of a staff determination that the length of a rental of a residential property does not change the use of the property in the Austin City Code.

The appellants' position is that the rental of a residential property for less than 30 days changes the use to something other than residential. Their position is based on Section 25-2-3 (A) of the Code which partially states that "Residential uses include the occupancy of living accommodations on a nontransient basis." The appellants maintain that any rental for less than 30 days is "transient."

Staff does not agree with this position. The term transient is not defined in Section 25-2 Zoning of the City Code. It certainly is not defined as 30 days or less. Some may consider a lease of less than 6 months to be transient, others less than one year. Without a clear definition staff cannot agree that a lease of less than 30 days causes a residential use to no longer be residential.

The Code of the City of Austin does not differentiate between rented and owner-occupied housing. The property that is being leased for less than 30 days was permitted and built and as residential structures and continues to be used as a residential structure. They are not structurally changed. If an owner wanted to sell a house or condo or lease it out for longer than 30 days no changes would need to be made to the structure.

If these short term rentals were not considered to be residential staff presumes the appellants would argue that they are a hotel motel use which is defined as "the use of a site for the provision of rooms for temporary lodging. This use includes hotels, motels and transient boarding

houses." This definition refers to the rental of rooms. With short term rentals the whole property is rented at one time. Therefore staff cannot agree that short term rental of a house or a condo causes the use to change to hotel-motel.

The section code cited, 25-2-3 (A) is a broad description of residential uses. Later in section 25-2-3(B) the Code provides use classifications in a more specific nature such as single family, duplex, condo etc. The broader description states that "Residential uses include the occupancy of living accommodations on a nontransient basis." It then provides a specific list of exclusions, such as prison and mental hospitals, which does not include any reference to a residence with a short term rental period.

The practice of renting out a house, or a portion of a house for a short period of time is an established practice in Austin. The University of Texas with visiting lecturers and researchers as well as sports fans is one reason. Sessions of the State Legislature bring an influx of lawmakers, aides and lobbyists are another. In more recent years the growing success of the local film industry and of events such as South by Southwest, and the Austin City Limits festival have brought more visitors to town. Many property owners cater to these visitors, by offering an alternative to a hotel when staying in Austin. The practice of renting out a residential unit for these short term visitors has historically been treated as an allowable use.

The City recognizes that the increased use of short term leases of single family homes has created, in some instances, friction between property owners and nearby residents. To address these concerns the Planning Commission has initiated a code amendment and the staff is working on changes to incorporate suggestions from a diverse range of impacted parties. The City Planning Commission is creating a working group of property owners, neighbors, and other stakeholders provide suggestions and input for staff. A comprehensive proposal responding to the issues raised by short term rental will be presented to the City Council in the upcoming months. A determination made at this time by the Board must be based on the current City Code and not on any amendments that may be approved by the City Council in the near future. Staff believes that this is the proper venue to discuss the short term rental issue. That it is a policy issue best handled by the Planning Commission and the City Council and not a Code interpretation issue.

(signed)

Jerry Rusthoven, AICP

Planning and Development Review Department



C15-2011-0038

Leslie D. Rosenstein  
6619 Argentia Rd.  
Austin, TX 78757

March 31, 2011

Board of Adjustment  
City of Austin  
P.O. Box 1088  
Austin, TX 78767

Re: Standing as Interested Party for Appeal of Interpretation Dated March 12, 2011

Dear Chair and Members of the Board of Adjustment,

I meet the requirements of 25-1-131 as an Interested Party:

- The administrative decision of March 12, 2011 by Director Guernsey was addressed to me.
- I have communicated an interest in this matter by filing repeated complaints about 6621 Argentia to the City, and by my letters of December 15, 2010 and February 4, 2011 to City Manager Ott and Mayor Leffingwell regarding this issue.

My phone number is 512-970-8433.

Respectfully,



Leslie D. Rosenstein, Ph.D.

C15-2011-0038  
ROW. 10574586  
TP-02350 1034  
0235010362

CITY OF AUSTIN  
APPLICATION TO BOARD OF ADJUSTMENT  
INTERPRETATIONS  
PART I: APPLICANT'S STATEMENT  
(Please type)

STREET ADDRESS: 6619 and 6621 Argentia Road

LEGAL DESCRIPTION: Subdivision –

Allandale Terrace Sec 2

Lot (s) 30 and 31 Block D Outlot N/A Division N/A

ZONING DISTRICT: SF-2

I/WE Leslie D. Rosenstein on behalf of myself/ourselves as  
authorized

Agent for self affirm that on the 31st

Day of March, 2011, hereby apply for an interpretation hearing before the Board of  
Adjustment.

Planning and Development Review Department interpretation is:

Pursuant to City Code 25-2-2 parts (A) and (B) (see Attachment A: City Codes), Director Greg Guernsey of the Planning and Development Review Department, made use classification determinations that affect **every single-family residence in Austin**. This interpretation appeal falls under part (C) of that section.

In his letter of March 12, 2011 (see Attachment B: Guernsey Interpretation Letter), the Director states: "[1] A rented residential structure, even one which is rented for a short period of time, is not classified as a Hotel/Motel land use under the existing City Land Use Code. [2] **While these uses are still classified as single family residential uses, the frequent rental of a single family home for short durations**, can make the minor conflicts often experienced by all neighbors more difficult to resolve."

Further clarification of these two determinations was requested (see Attachment C: Email to Ms. Kathleen Buchanan):

[1] Transient rentals in residential zoning are not hotel/motel use.

[2] **Transient rentals in residential zoning are classified as single family residential uses in code.**

While the first determination, concerning hotel/motel use contradicts the plain meaning of City Code 25-2-4 (B) (35): "hotel-motel use is the use of a site for the provision of rooms for temporary lodging," this specific determination is not appealed in this application. **This interpretation appeal only addresses the second determination, that "the frequent**

**rental of a single family home for short durations" is classified as a single-family residential use.** As described below, this interpretation is "contrary to applicable law or regulations" (City Code 25-1-190).

I feel the correct interpretation is:

**The transient rental (30 days or less) of a single-family home in residential zoning is not an allowed residential use** as found in City Code 25-2-3 (A) and (B). (See Attachment A: City Codes.)

Note: As used in this interpretation appeal, "transient rental" is also known as short-term rental (STR), and vacation rental.

I respectfully request that the granting of this appeal include a grace period of two months to allow residential property owners or their agents time to convert from transient rentals to nontransient rentals (rentals greater than 30 days in length).

**NOTE:** The board must determine the existence of, sufficiency of and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable findings statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional support documents.

**Special Note and Objection from Applicant:**

The Interpretation Appeal form as supplied by staff does not precisely fit the nature of this appeal. A formal protest and request for a suitable form was made to Director Guernsey and he stated that I should: "proceed to use the existing form to the best of your ability" (see Attachment D: Email from Greg Guernsey).

Article 1 part (B) of The Rules of Procedure for the BOA (see Attachment E: BOA Rules), states: "All appeals shall be filed on an application form provided by the staff liaison and shall be complete in all respects before being accepted for filing." Article 2 part (D) states: "The Board may grant an appeal if it makes all of the following findings." Again, some of these findings are worded in such a way that do not quite fit this particular appeal (for example, item 2 refers to "permitting" rather than "denying" a use, and item 3 refers to "not granting" rather than "granting" a special privilege).

Every effort was made to complete this form; reasonable modifications were required to better serve the intent of BOA Rules and City Code in making this appeal. I ask the Board to apply revised findings, as shown herein, that are better suited to the logic of this particular case when considering this appeal.

1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations or map in that: \_\_\_\_\_

The Director has ruled that the transient rental (30 days or less) of a single-family home is an allowed residential use under existing City Land Use Code. This interpretation is contrary to both the intent and purpose of residential zoning as defined in Code (25-2-3 and 25-2-51). In fact, it is my opinion that this is out of character with residential neighborhoods, and a new use that grants a special privilege to operators of transient rental properties in residential neighborhoods.

*Nontransient* rental (greater than 30 days) of a single-family home is not at issue here. Non-owner-occupied *nontransient* rentals have always been an allowed residential use under Code. But Code is clear that the duration (and frequency) of a lease matters: nontransient rentals are greater than 30 days in duration and constitute an allowed residential use by definition. On the other hand, transient rentals, for 30 days or less, are not an allowed residential use unless they are a defined and regulated Bed and Breakfast Group 1 or a Group Home (Class 1) (City Code 25-2-3).

Structures in residential zoning are built, by definition, to residential building codes. This, however, does not necessarily make transient rentals in these structures allowable under code. In fact, Texas building codes clearly define a "residential" structure as a dwelling "that does not have the character of a facility used for the accommodation of transient guests" (see Texas 214.211(3) in the following *Definitions* section).

While City Code 25-2-2 states that the director of PDRD "shall determine the appropriate use classification for an existing or proposed use or activity", it also states that he or she, "**shall consider the characteristics of the proposed use and the similarities, if any, of the use to other classified uses**". While transient rental use in residential zoning is similar to a B&B, The Director has not noted this similarity, nor has he argued that they should be regulated by the B&B codes. He has, instead, created a new class of transient use in residential zoning, with no regulations

Most importantly, **a residence or dwelling is where someone lives**. People who rent transient accommodations in residential zoning do not live in them; rather, they live elsewhere, they vote elsewhere, and they displace residents who could participate in the neighborhood community in any of the variety of ways residents contribute. This is what residential zoning is all about: it is for the protection and benefit of Austin residents.

### **Intent of Code**

City Code 25-2-1 describes and classifies the five "major use categories" in the "zoning jurisdiction" as **residential, commercial, industrial, civic, and agricultural**. These five uses are further defined in Chapter 25-2.

The intent of the residential zoning Code is clear: transient rentals (except for Bed & Breakfasts and Group Homes) are excluded from family-oriented neighborhoods. City Code 25-2-3 (A) clearly describes residential uses to "include the occupancy of **living accommodations on a nontransient basis**". Part (B) describes the allowed residential uses, and only Bed and Breakfast Residential and Group Residential provide for transient uses (both of which are strictly regulated in City Codes 25-2-6, 25-2-781, 25-2-841, and 25-12-213). In SF-2 zoning, which is the zoning classification of 6621 Argentinia Rd., Bed and Breakfast Group 1 is actually the only nontransient use permitted. Therefore, in residential zoning, people are allowed to **sleep** where they **live** on a **permanent** basis, or stay

temporarily only if the owner or owner's agent is present, which is in direct opposition to Director Guernsey's interpretation.

If the Director's interpretation were correct, then transient rentals of single-family homes would constitute a new class of unregulated public accommodations in our neighborhoods. Consider that a steady stream of strangers is staying next door to residential property owners or long-term tenants without any supervision or continuity. This is a distortion of the intent of Code.

City Council has traditionally been protective of the neighborhoods' residential character. This is illustrated by the ordinances concerning operation of Bed & Breakfasts (Group 1): Individuals can only own one; they must live on the premises; they must obtain a license; the property must be more than 1000 feet from the next Bed & Breakfast, and the address cannot be advertised. In opposition, transient rentals in residential zoning in Austin are unlicensed and unregulated, and investors often own more than one with no regard for proximity to other transient rentals or Bed & Breakfasts. Given their current rate of growth, the hundreds of transient rentals in Austin neighborhoods today may turn into thousands tomorrow due to the efficiency of Internet marketing. Compare that to the total of 10 Bed & Breakfasts in Austin today (according to Charles Boas in Code Compliance).

### Definitions

In arguing for his use classification determination, the Director may claim that City Code is not clear in its definition of certain terms. In any statutory interpretation, the plain meaning of ordinary English words in their ordinary senses is assumed (see 1992 Code Section 1-1-3; Ord. 031106-11; Ord. 031211-11). Therefore, words like "transient", "nontransient", "temporary", and "residential" are clear as per definitions from *Webster's* and related sources:

Living accommodations—*where one lives*

Nontransient—*not transient, permanent*

Reside—*to dwell permanently or continuously*

Residence—*the act or fact of dwelling in a place for some time*

Residential—*used as a residence or by residents*

Temporary—*lasting for a limited time, transient*

Transient—*passing through or by a place with only a brief stay or sojourn*

A clear definition of "residential" also appears in the Texas Local Government Code, Chapter 214 MUNICIPAL REGULATION OF HOUSING AND OTHER STRUCTURES. In 214.211 (3) we find that:

"Residential" means having the character of a detached one-family or two-family dwelling or a multiple single-family dwelling that is not more than three stories high with separate means of egress, including the accessory structures of the dwelling, and that **does not have the character of a facility used for the accommodation of transient guests** or a structure in which medical, rehabilitative, or assisted living services are provided in connection with the occupancy of the structure.

This state statute covers the building of residential zoned structures with the clear expectation that those structures will be used for nontransient purposes. In other words, when a residential building permit is issued, the resulting use is intended to be nontransient.

For further clarification of the word "transient", City Code 25-12-1 (A) states that "the 2009 International Building Code published by the International Code Council is adopted and incorporated into this section" of City Code. Section 310.2 of the 2009 International Building Code defines "transient" as the **"occupancy of a dwelling unit or sleeping unit for not more than 30 days"**.

Transient rentals in residential zoning provide most of the same amenities as a hotel: furnished accommodations, clean linens, and cleaning services in preparation for the next "guest". Members of the transient rental industry even make constant reference on the Internet to their "industry", their "business", their "guests" similar to hotels in their bookings, marketing, and rentals. If transient rentals in residential zoning are for the same duration and conditions as lodging in a hotel ("temporary" and "transient"), then they too constitute the same "transient" use as a hotel room, which most people understand to be for "short duration".

Both the City and the State have recognized transient rentals as a special, taxable, commercial use of property by their Hotel Occupancy Tax (HOT) provisions. City Code 11-2-1 (3) states that a "hotel means a building in which members of the public may obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or *other building where a room is furnished for a consideration*". Chapter 11-2 also states that HOT must be collected and remitted for any hotel room occupied for less than 30 days. This chapter clearly includes transient rentals in residential zoning. Similar state law applies (see Texas Tax Code, Chapter 156) City's current collection of HOT from at least 50 transient rentals in residential zoning in Austin, in addition to collections from Bed & Breakfasts serves as prima facie evidence of their "transient" use in residential zoning.

### **Purpose of Code**

City Code 25-2-51 clearly describes the purposes of residential zoning districts, including: to **"reserve areas for residential occupancy"** in a "variety of housing types consistent" with the **"standards of public health, safety, and welfare"**, and to **"ensure adequate privacy for each dwelling"**. Transient rentals in residential zoning threaten the health, safety, welfare, and privacy of family-oriented neighborhoods, and cater to non-residents who have little incentive to be good neighbors. Director Guernsey's interpretation allows a use contrary to stated zoning purposes.

The Planning and Development Review Department published the *City of Austin Neighborhood Planning Guide to Land Use Standard, May 2008*, describing City land use policy ([ftp://ftp.ci.austin.tx.us/npzd/website/Planning\\_Zoning/land\\_use\\_policy\\_guide.pdf](ftp://ftp.ci.austin.tx.us/npzd/website/Planning_Zoning/land_use_policy_guide.pdf)). The *Guide* describes the purpose of single family detached or two family residential uses at typical urban and/or suburban densities (pg 14):

- Preserve the land use pattern and future viability of existing neighborhoods;
- Protect residential neighborhoods from incompatible business or industry and the loss of existing housing.

Principles of land use in the *Guide* include the following (pg 8):

- Ensure an adequate and diverse supply of housing for all income levels;
- Minimize negative effects between incompatible land uses;

- Discourage intense uses within or adjacent to residential areas;
- Avoid creating undesirable precedents;
- Ensure similar treatment of land use decisions on similar properties;
- Balance individual property rights with community interests and goals;
- Promote development that serves the needs of a diverse population.

The current administrative decision being appealed threatens these purposes and changes the land use patterns of existing family-oriented neighborhoods.

Much effort has gone into creating a revised comprehensive plan for Austin known as *Imagine Austin*. The *Vision Statement* (<http://www.ci.austin.tx.us/compplan/vision.htm>) has been published and includes the following principles:

- Austin is a beacon of sustainability, social equity and economic opportunity . . . where community needs and values are recognized.
- Austin is livable. One of Austin's foundations is its safe, well-maintained, stable, and attractive neighborhoods and places whose character and history are preserved. Development occurs . . . while protecting and enhancing neighborhoods . . . in a manner friendly to families with children, seniors, and individuals with disabilities. Clear guidelines . . . provide certainty for residents and the business community.
- Austin values and respects its people. People across all parts of the city and of all ages and income levels live in safe, stable neighborhoods with a variety of affordable and accessible homes.

### **Non-Conforming Use**

The decision being appealed would incorrectly make transient rentals in residential zoning a legal, permitted use under City Code. The Board of Adjustment is authorized under City Code to use their authority to correct this. Again, the only legal transient uses under Code are conforming Bed & Breakfasts (Group 1) and, in some areas, Group Homes. Other transient rentals in residential zoning do not qualify as a legal non-conforming use since none were in operation before the pertinent residential zoning codes went into effect.

### **Conclusion**

Director Guernsey's administrative decision is contrary to the City Code, as well as state statute, PRD's *Neighborhood Planning Guide*, and tenets of the evolving comprehensive plan. Transient rentals in residential zoning bring a steady stream of un-vetted, non-resident strangers into our neighborhoods without the same regulatory safeguards and limitations imposed on Bed & Breakfasts and Group Homes. They are not the legal or primary residence of the occupants. They introduce massive potential for abuse of both the rented house and the neighborhood: late and excessive noise, overflowing trash, parking issues, mistaken home invasions, late nights, verbal abuse, litter, heavy traffic, unregistered sex offenders, and a steady flow of strangers who have no stake in our community. (See Attachment F: Some Problems with Transient Rentals and Attachment G: Transient Rental Marketing.)

People who buy a home in a residential area have every reasonable expectation that zoning will limit the uses of the neighborhood to residential. Established zoning law and case law must prevail, otherwise zoning is meaningless. Why should the intrusive nature of one class

of commercial activity be allowed while others are segregated from neighborhoods by zoning? Property owners may complain that this limitation infringes on their right to do what they want with their property, but they would be the first in line to protest a homeless shelter, a convenience store, or a hog farm next door. That's what zoning is for. Property rights belong to those who use their property in compliance with Code.

It does not matter whether these transient rentals are paying hotel tax and whether that represents revenue for the City (albeit at the expense of legitimate hotel revenues). They are operating illegally in detriment to residential property owners. In actuality, the fact that these transient rentals are collecting a hotel tax corroborates the point that they are operating as transient facilities outside the allowed uses of single-family residences.

In summary, I strongly contend that the current administrative decision being appealed violates the intent and purpose of Code as shown by its plain meaning, the principles of sound land use planning declared by the City in its own documents, and the allowed transient uses in residential zoning as enumerated in code in which these transient rentals are not an exception on the list. I respectfully request that you grant this request for an appeal of the administrative decision outlined in the March 12, 2011 letter to me from Mr. Greg Guernsey.



2. An appeal of use provisions could clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because: \_\_\_\_\_

**Note:** This item is not suitable for this appeal as worded, so a substitute wording/finding is used instead:

2. An appeal of the interpreted use provision could clearly deny a use which is out of character with the uses enumerated for, and with the objectives of, the district in question because: \_\_\_\_\_

The Director's interpretation allows a residential use that is out of character with Austin residential neighborhoods. City Code 25-2-2 states that the director of PDRD "**shall consider the characteristics of the proposed use and the similarities, if any, of the use to other classified uses**". City Code 25-2-51 describes the purposes and objectives of residential zoning districts to: "**reserve areas for residential occupancy**" consistent with the "**standards of public health, safety, and welfare**" and "**ensure adequate privacy** for each dwelling". By their very nature, transient rentals in residential zoning violate these objectives. Granting this appeal would deny this new use and protect the character of residential zoning.

The *City of Austin Neighborhood Planning Guide to Land Use Standard May 2008* includes land use principles such as: **ensure an adequate supply of housing**, minimize negative effects between incompatible uses, address public safety, avoid undesirable precedents, and balance individual property rights with community interests. The stated purpose in the *Guide* of single family residential uses are to: **preserve the future viability of existing neighborhoods** and **protect residential neighborhoods from incompatible business and the loss of existing housing**. Transient rentals in residential zoning are clearly out of character with the clear purpose and land use of residential neighborhoods; they destroy community and remove housing stock.

### **Nature of Residential Neighborhoods**

City Code 25-2-3 (A) describes residential uses to "include the occupancy of living accommodations on a **nontransient** basis". Part (B) describes the allowed residential uses, and only Bed and Breakfast Residential (in SF-2) and Group Residential (in other residential zones) provide for transient uses (both of which are strictly regulated in City Codes 25-2-6, 25-2-781, 25-2-841, and 25-12-213). Transient rentals (except for Bed & Breakfasts Group 1 and Group Homes) are excluded by Code from family-oriented neighborhoods. In Texas Local Government Code 214.211 (3), "residential" means having the character of a detached one-family or two-family dwelling that does not have the character of a facility used for the accommodation of **transient** guests.

The *Vision Statement* of the *Imagine Austin* comprehensive plan states that "Austin is livable" with "safe, well-maintained, stable, and attractive neighborhoods". That "development occurs . . . in a manner friendly to families with children, seniors, and individuals with disabilities." That "people across all parts of the city and of all ages and income levels live in safe, stable neighborhoods with a variety of affordable and accessible homes." People buy homes in Austin with the expectation of stability and residential use in neighborhoods zoned as such. Long-term neighbors get to know and look out for each other. Volunteers maintain our Neighborhood Watch programs.

## **Problems and Regulatory Burdens**

Transient rentals in residential zoning introduce a massive potential for abuse: excessive noise, overflowing trash, parking issues, late nights, verbal abuse, litter, heavy traffic, illegal signs, overlimit occupancy, work without permit, unnecessary interruptions, unpaid hotel occupancy taxes, unregistered sex offenders, etc. (See Attachment F: Some Problems with Transient Rentals.) These problems, and a steady flow of strangers who have no stake in our community, destroy the sanctity, safety, and stability of family-oriented neighborhoods, distressing older residents and parents with young children. They disrupt the sense of community and degrade the fabric of our neighborhoods.

Neither the City nor transient rental property owners can guarantee the peace and quiet enjoyment of our neighborhoods as proven by the long list of unresolved 311 complaints. These commercial uses will always be a nuisance in our neighborhoods regardless of any new regulations. There are additionally hidden and direct costs for the City and its residents. For example, a faster response time will be required from Code Compliance, including new weekend coverage, because disruptive "guests" are often long gone before Code Compliance arrives. Residents are not well-served when code complaints are answered days later with "no violation found" on empty premises. The vicious cycle repeats itself each time new "guests" arrive.

While approximately 80 transient rentals are currently registered with the City Controller, not all of them have paid their hotel taxes due, and hundreds more are ignoring state and local tax law. City employees will have to be assigned the job of collecting these hotel occupancy taxes, which won't even begin to cover the costs of the increased services needed.

Transient rentals in residential zoning are very different from nontransient rentals that are owner-occupied, including that there is less monitoring of guests. They function more like a motel but without the regulatory burden and costs, so they represent unfair competition for legitimate hotels and Bed & Breakfasts operating in accordance with Code.

City Attorney Kathleen Buchanan stated in a recent public stakeholder meeting that neighbors could document Code violations by transient rental guests and swear out a complaint in Municipal Court. However, this would be an undue burden on residents who would have to repeat this task for each set of guests who engage in illegal behavior.

## **Conclusion**

We live in neighborhoods where we know our neighbors and feel safe allowing our children to play outside. We do not want strangers coming and going and filling the house next door with tons of people and noise while we try to live normal lives. We want tourism to stay in tourist areas, including regulated hotel rooms. Many "guests" are not as considerate as transient rental owners portray them. We do not want our children playing in what used to be a family neighborhood, but now has turned into homes where different strangers come to stay every week. Your reversal of the current administrative decision being appealed will protect the character of our neighborhoods.

3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that: \_\_\_\_\_

**Note:** This item is not suitable for this appeal as worded, so a substitute wording/finding is used instead:

3. The interpretation being appealed will grant a special privilege to one class of property inconsistent with other properties or uses similarly situated in that: \_\_\_\_\_

The decision being appealed will grant a special privilege to operators and owners of transient rental residential properties since this use is contrary to the clear intent and purpose of Code, and they are unregulated whereas their competitors are regulated. In addition, this use places an undue regulatory enforcement burden on adjacent residential property owners and nontransient residents.

Non-owner-occupied *nontransient* rentals have always been an allowed residential use under Code. Nontransient rentals are greater than 30 days in duration and constitute an allowed residential use by definition. On the other hand, *transient* rentals, for 30 days or less, are not an allowed residential use unless they are a defined and regulated Bed and Breakfast Group 1 or, in certain residential zones, a Group Home (Class 1) (City Code 25-2-3). Again, the current administrative decision being appealed would incorrectly make transient rentals in residential zoning a legal, permitted, and unregulated use under City Code

### **Unfair Competitive Advantage**

Bed and Breakfast Residential, Group Residential, and Hotel provide for transient uses that are strictly regulated in City Codes 25-2-6, 25-2-781, 25-2-841, and 25-12-213. Regulations include safety standards that are not applied to transient rentals in residential zoning. Currently, there are no inspectors assigned, and no regulations in force, for the use of transient rentals in residential zoning.

Hotels are heavily regulated in code for the public good. Transient rentals in residential zoning also constitute a class of public accommodations but they are unregulated. The current administrative decision being appealed will grant a special privilege to transient rentals in residential zoning not available to Bed & Breakfasts and hotels. This unfair and unregulated competition may damage hotels, cost the City in revenue and increased costs, and endanger the public.

### **Regulatory Enforcement Burden**

Neither the City nor transient rental property owners can guarantee the peaceful and quiet enjoyment of our neighborhoods as proven by a long list of unresolved 311 complaints. The burden and cost of enforcement falls to the City at the expense of residents and to the benefit of transient rental property owners.

Since transient rentals in residential zoning bring a steady stream of un-vetted, non-resident strangers into our neighborhoods without the same regulatory safeguards and limitations imposed on Bed & Breakfasts and Group Homes, the onus of the regulatory enforcement burden is placed directly on hapless neighbors of transient rentals, which is clearly contrary to the intent and purpose of residential zoning. In other words, the burden falls unfairly on permanent residents to police these properties continuously at no cost to the transient rental owner.

Some transient rental owners may make the argument to neighbors that if there is a problem with a "guest", just call them and they'll take care of it (though not in the case of 6621 Argentia Rd., the property at the center of the administrative decision being appealed). However, that still leaves the job of policing "guests" to the neighbors. The regulatory burden should not fall to adjacent property owners in residential zoning.

### **Property Rights**

The property rights of transient rental owners should not trump the property rights of residents who have every expectation of the quiet enjoyment of their homes and the ability to raise their families in peace and safety. Long-term (nontransient) rentals have always been around and are still available to all of these transient rental property owners.

Most transient rental property owners are investors (rather than owner occupiers) since the majority of transient rentals in residential neighborhoods are available year round. This investment activity presents a problem for almost everybody else: other residents who need affordable housing, the neighborhood that needs stability, the city that loses on taxes from legitimate hotels, and sometimes even the "guest" who is endangered by the lack of safety regulations.

The Board of Adjustment often hears variance applications after the fact: people seeking forgiveness rather than permission. We have a similar case with transient rentals. Transient rentals in residential zoning have been an illegal use in our neighborhoods from the start. Bad behavior should not be rewarded—ignorance of the law by these property owners does not obligate the City or the residents to make them whole. They are not prohibited by Code from using their property for long-term rentals with permanent residents. Proponents of transient rentals argue that people have already invested in transient rentals in good faith and should be allowed to keep using them as they choose. Transient rentals in residential zoning have never been an allowed use in Austin other than for Bed & Breakfasts, which are heavily regulated with safeguards for our neighborhoods.

### **Property Values**

The operation of a transient rental in a residential zoning depresses property values since fewer people are willing to buy a house for their family near a transient rental and its potential problems.

**APPLICANT/AGGRIEVED PARTY CERTIFICATE** – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed  Printed Leslie D. Rosenstein

Mailing Address 6619 Argentina Rd.

City, State & Zip Austin, TX 78757 Phone 970-8433

**OWNER'S CERTIFICATE** – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed  Printed Leslie D. Rosenstein

Mailing Address 6619 Argentina Rd.

City, State & Zip Austin, TX 78757 Phone 970-8433

## REQUESTS FOR INTERPRETATION

(Appeal of an Administrative Decision)

### REQUIRED ITEMS FOR A COMPLETE APPLICATION:

The following items are required in order to file an application for interpretation to the Board of Adjustment.

- A completed application with all information provided. Additional information may be provided as an addendum to the application.
- Standing to Appeal Status: A letter stating that the appellant meets the requirements as an Interested Party as listed in Section 25-1-131(A) and (B) of the Land Development Code. The letter must also include all information required under 25-1-132(C).
- Site Plan/Plot Plan drawn to scale, showing present and proposed construction and location of existing structures on adjacent lots.
- Tax plats: Full-size (not reduced and not altered) tax plats with the subject property clearly and accurately marked and showing all properties within a 300 foot radius of the property. These may be purchased from the Travis Central Appraisal District at 8314 Cross Park Drive, 834-9138.
- Payment of application fee of \$360.00 for residential zoning or \$660 for commercial zoning. Checks should be made payable to the City of Austin.

**An appeal of an administrative decision must be filed by the 20<sup>th</sup> day after the decision is made (Section 25-1-182). Applications which do not include all the required items listed above will not be accepted for filing.**

**If you have questions on this process contact Susan Walker at 974-2202.**

**To access the Land Development Code: sign on to: [www.ci.austin.us.tx/development](http://www.ci.austin.us.tx/development)**

**CHAPTER 11-2. HOTEL OCCUPANCY TAX.**

**11-2-1 DEFINITIONS.** In this chapter:

- (1) **CONSIDERATION** means the cost of a hotel room only if the room is ordinarily used for sleeping, and does not include the cost of any food served or personal services rendered to the room or a person in the room unless related to the cleaning and readying of the room for occupancy.
- (2) **DEPARTMENT** means the Financial and Administrative Services Department.
- (3) **HOTEL** means a building in which members of the public may obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or other building where a room is furnished for a consideration, but does not include a hospital, sanitarium, or nursing home.

**11-2-2 TAX LEVIED; EXCEPTIONS.**

(A) A tax of seven percent of the consideration paid for a hotel room is levied on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays the consideration for the use or possession or for the right to the use or possession of a hotel room that costs two dollars or more each day and is ordinarily used for sleeping.

(B) This chapter does not impose a tax on:

- (1) a person who has the right to use or possess a hotel room for at least 30 consecutive days, so long as there is no interruption of payment for the period; or
- (2) the United States, a governmental entity of the United States, or an officer or employee of the United States.

**11-2-3 COLLECTION OF TAX GENERALLY.**

(A) A person who owns, operates, manages, or controls a hotel or collects payment for the use or possession or for the right to the use or possession of a hotel room shall collect the tax levied by this chapter for the City.

(B) A person who collects the tax shall deposit the tax proceeds into in a separate liability account and may not use the tax proceeds for any purpose other than payment to the City.

**25-1-182 INITIATING AN APPEAL.** An interested party may initiate an appeal by filing a notice of appeal with the responsible director or building official, as applicable, not later than:

- (1) the 14th day after the date of the decision of a board or commission; or
- (2) the 20th day after an administrative decision.

**25-1-183 INFORMATION REQUIRED IN NOTICE OF APPEAL.** The notice of appeal must be on a form prescribed by the responsible director or building official and must include:

- (1) the name, address, and telephone number of the appellant;
- (2) the name of the applicant, if the appellant is not the applicant;
- (3) the decision being appealed;
- (4) the date of the decision;
- (5) a description of the appellant's status as an interested party; and
- (6) the reasons the appellant believes the decision does not comply with the requirements of this title.

**25-1-184 NOTICE TO APPLICANT CONCERNING INTERESTED PARTY.** The responsible director shall notify an applicant in writing if there is an interested party to an administrative decision.

**25-1-185 NOTICE TO PRESIDING OFFICER AND APPLICANT.** On receipt of a notice of appeal or an amendment of a notice, the responsible director or building official shall promptly notify the presiding officer of the body to which the appeal is made and, if the applicant is not the appellant, the applicant.

**25-1-190 APPELLATE BURDEN.** The appellant must establish that the decision being appealed is contrary to applicable law or regulations.

#### 25-1-191 CONDUCT OF PUBLIC HEARING.

(A) Before opening a hearing, a body hearing an appeal shall decide preliminary issues raised by the parties, including whether to postpone or continue the hearing and whether the appellant has standing to appeal.

(B) A public hearing on an appeal shall proceed in the following order:

- (1) a report from City staff;
- (2) a presentation by the appellant;
- (3) comment by persons supporting the appeal;
- (4) comment by persons opposing the appeal; and
- (5) a rebuttal by the appellant.

25-1-192 POWER TO ACT ON APPEAL. A body hearing an appeal may, in accordance with the requirements of this title, exercise the power of the official or body whose decision is appealed. A decision may be upheld, modified, or reversed.

25-2-1 USE CLASSIFICATIONS. This article describes and classifies uses in the zoning jurisdiction. The major use categories are residential, commercial, industrial, civic, and agricultural.

#### 25-2-2 DETERMINATION OF USE CLASSIFICATION.

(A) The director of the Neighborhood Planning and Zoning Department shall determine the appropriate use classification for an existing or proposed use or activity.

(B) In making a determination under this section, the director of the Neighborhood Planning and Zoning Department shall consider the characteristics of the proposed use and the similarities, if any, of the use to other classified uses.

(C) An interested party may appeal a determination of the director of the Neighborhood Planning and Zoning Department under this section to the Board of Adjustment.

(D) The director of the Neighborhood Planning and Zoning Department shall notify the Planning Commission and the Zoning and Platting Commission of the filing of an appeal within 30 days of the filing, and of the disposition of the appeal within 30 days of disposition.

(E) The director of the Neighborhood Planning and Zoning Department shall maintain a list of determinations made under this section.

#### 25-2-3 RESIDENTIAL USES DESCRIBED.

(A) Residential uses include the occupancy of living accommodations on a nontransient basis. Residential uses exclude institutional living arrangements providing 24-hour skilled nursing or medical care and those providing forced residence, including mental hospitals and prisons.

(B) Residential use classifications are described as follows:

(1) BED AND BREAKFAST RESIDENTIAL use is the use of a residential structure to provide rooms for temporary lodging for overnight guests on a paying basis.

(2) CONDOMINIUM RESIDENTIAL use is the use of a site for attached or detached condominiums, as defined in the Texas Property Code.

(3) CONSERVATION SINGLE FAMILY RESIDENTIAL use is the use of a site for multiple detached dwelling units with each dwelling unit located on an individual lot and the remainder of the site being jointly-owned and preserved as open space.

(4) DUPLEX RESIDENTIAL use is the use of a site for two dwelling units within a single building, other than a mobile home.

(5) GROUP RESIDENTIAL use is the use of a site for occupancy by a group of more than six persons who are not a family, on a weekly or longer basis. This use includes fraternity and sorority houses, dormitories, residence halls, and boarding houses.

(6) MOBILE HOME RESIDENTIAL use is the use of a site for occupancy of mobile homes on a weekly or longer basis. This use includes mobile home parks and mobile home subdivisions.

(7) MULTIFAMILY RESIDENTIAL use is the use of a site for three or more dwelling units, within one or more buildings, and includes condominium residential use.

(8) RETIREMENT HOUSING (LARGE SITE) use is the use of a site for more than 12 dwelling units designed and marketed specifically for the elderly, the physically handicapped, or both.

(9) RETIREMENT HOUSING (SMALL SITE) use is the use of a site for 3 to 12 dwelling units designed and marketed specifically for the elderly, the physically handicapped, or both.



(10) SINGLE-FAMILY ATTACHED RESIDENTIAL use is the use of a site for two dwelling units, each located on a separate lot, that are constructed with common or abutting walls or connected by a carport, garage, or other structural element.

(11) SINGLE-FAMILY RESIDENTIAL use is the use of a site for only one dwelling unit, other than a mobile home.

(12) SMALL LOT SINGLE-FAMILY RESIDENTIAL use is the use of a small lot for only one detached dwelling unit, other than a mobile home.

(13) TOWNHOUSE RESIDENTIAL use is the use of a site for townhouses.

(14) TWO-FAMILY RESIDENTIAL use is the use of a lot for two dwelling units, each in a separate building, other than a mobile home.

#### 25-2-4 COMMERCIAL USES DESCRIBED.

(A) Commercial uses include the sale, rental, servicing, and distribution of goods, and the provision of services, other than those classified as industrial or civic uses.

(B) Commercial use classifications are described as follows:

(35) HOTEL-MOTEL use is the use of a site for the provision of rooms for temporary lodging. This use includes hotels, motels, and transient boarding houses.

#### 25-2-51 PURPOSES OF RESIDENTIAL DISTRICTS. The purposes of the residential district designations are to:

(1) reserve areas for residential occupancy and provide for a broad range of residential densities and variety of housing types consistent with the Comprehensive Plan and standards of public health, safety, and welfare;

(2) ensure adequate light, air, privacy, and open space for each dwelling;

(3) encourage compatibility between residential uses and other land uses;

(4) facilitate the planning for and provision of infrastructure improvements to serve anticipated population, dwelling unit density, traffic generation, and public service requirements; and

(5) promote energy conservation.

#### 25-2-6 CIVIC USES DESCRIBED.

(A) Civic uses include the performance of utility, educational, recreational, cultural, medical, protective, and governmental functions, and other uses that are strongly vested with public or social importance.

(B) Civic use classifications are described as follows:

(22) GROUP HOME, CLASS I (GENERAL) use is the use of a site for the provision of a family-based facility providing 24 hour care in a protected living arrangement for more than 6 but not more than 15 residents and not more than 3 supervisory personnel. This use includes foster homes, homes for the physically and mentally impaired, homes for the developmentally disabled, congregate living facilities for persons 60 years of age or older, maternity homes, emergency shelters for victims of crime, abuse, or neglect, and residential rehabilitation facilities for alcohol and chemical dependence.

(23) GROUP HOME, CLASS I (LIMITED) use is the use of a site for the provision of a family-based facility providing 24 hour care in a protected living arrangement for not more than 6 residents and 2 supervisory personnel. This use includes foster homes, congregate living facilities for persons 60 years of age or older, maternity homes, and homes for persons with physical or mental impairments not listed in the description of family home use. Persons with physical or mental impairments are persons whose impairments substantially limit one or more of the persons' major life activities, who have a record of the impairment, or who are regarded as having the impairment, as defined in the Americans with Disabilities Act.

#### 25-2-781 BED AND BREAKFAST RESIDENTIAL USE STRUCTURES CLASSIFIED.

(A) A residential structure may be used as a bed and breakfast residential use only if it qualifies as a Group 1 or Group 2 bed and breakfast residential use structure.

(B) Except as provided in Subsection (D), a Group 1 bed and breakfast residential use structure is a structure that contains not more than:

(1) five rental units if the building in which the bed and breakfast residential use is located is more than 50 years old; or

(2) three rental units if the building in which the bed and breakfast residential use is located is 50 years old or less.

(C) Except as provided in Subsection (D), a Group 2 bed and breakfast residential use structure is a structure that contains not more than:

(1) 10 rental units if the building in which the bed and breakfast residential use is located is more than 50 years old; or

(2) five rental units if the building in which the bed and breakfast residential use is located is 50 years old or less.

(D) For an establishment that operated as a lodging house residential use on or before October 1, 1994:

(1) a Group 1 bed and breakfast residential use structure is a structure that contains not more than five rental units; and

(2) a Group 2 bed and breakfast residential use structure is a structure that contains not more than 10 rental units.

#### 25-2-782 GENERAL REQUIREMENTS FOR A BED AND BREAKFAST RESIDENTIAL USE.

(A) A person may own only one bed and breakfast residential use facility.

(B) The owner must reside in the bed and breakfast residential use structure or in another residential structure on the lot on which the structure is located.

(C) The owner of a bed and breakfast residential use structure must own the land on which the structure is located.

(D) The owner must obtain a license to operate a bed and breakfast residential use structure. The license must be renewed annually.

(E) The owner of a bed and breakfast residential use may employ one or more persons who do not permanently reside on the lot on which the use is located to assist in the operation of the bed and breakfast residential use if the total hours worked by the employees does not cumulatively total more than 40 hours per week.

(F) Meal service is prohibited, except for breakfast service to an overnight guest.

(G) A register of guests must be maintained.

(H) A person may not structurally alter the exterior of a Group 1 residential use structure to change the existing residential character of the structure.

(I) A bed and breakfast residential use must be more than 1000 feet from an existing bed and breakfast residential use. A City council-adopted neighborhood plan that permits spacing of 1000 feet or less supersedes this subsection.

(J) A Group 1 bed and breakfast residential use must be located in the principal residential structure on the lot.

(K) Each bed and breakfast residential use structure of a Group 2 bed and breakfast residential use facility must comply with this section and other applicable Code requirements.

#### 25-2-783 NUMBER OF ROOMS.

(A) A bed and breakfast residential use structure may contain:

(1) one room for each 500 square feet of gross floor area within the structure if the owner resides in the structure; and

(2) one room for each 700 square feet of gross floor area within the structure if the owner resides in another residential structure on the lot.

(B) In this section, gross floor area does not include rooms occupied exclusively by the owner.

#### 25-2-784 PARKING REQUIREMENTS.

(A) Pervious pavers may be used as driveway and parking surface materials within the property boundaries.

(B) Not more than 25 percent of the parking surface may be constructed of gravel.

(C) A guest parking space is not permitted in the front yard of a bed and breakfast residential use structure.

25-2-785 CERTAIN ADVERTISING PROHIBITED. Advertising the street address of a bed and breakfast residential use through signs, billboards, television, radio, or newspapers is prohibited.

#### 25-2-841 GROUP AND FAMILY HOMES.

(A) A group home may not be located within a one-half mile radius of another group home. This requirement does not apply to a group home for persons sixty years of age or older. The council may waive this requirement.

(B) A family home may not be located within a one-half mile radius of any other family home. The council may waive this requirement.

(C) The residents of a group home or family home may not park on the premises of the home or an adjacent public right-of-way more than one motor vehicle for each bedroom.

(D) This subsection prescribes limits to the number of supervisory personnel.

(1) Not more than two supervisory personnel may reside in a group home, class I (limited) at one time.

(2) Not more than three supervisory personnel may reside in a group home, class I (general) at one time.

(3) Not more than three supervisory personnel may reside in a group home, class II at one time.

#### 25-12-1 BUILDING CODE.

(A) The 2009 International Building Code published by the International Code Council is adopted and incorporated into this section with deletions and amendments in Subsection (B) and Section 25-12-3 (Local Amendments to the Building Code).

**25-12-213 LOCAL AMENDMENTS TO THE INTERNATIONAL PROPERTY MAINTENANCE CODE.** The following provisions are local amendments to the 2009 International Property Maintenance Code. Each provision of this section is a substitute for any identically numbered provision of the International Property Maintenance Code deleted by Section 25-12-211(B) (International Property Maintenance Code) or is an addition to the Property Maintenance Code.

#### [25-12-213] CHAPTER 13 HOTEL, BOARDING HOUSE, ROOMING HOUSE, AND BED AND BREAKFAST ESTABLISHMENT REGULATIONS

**1301 DEFINITIONS.** The following words and terms shall, for the purposes of this chapter, have the meanings shown herein.

**BED AND BREAKFAST.** The use of an owner-occupied single-family residential structure to provide rooms for temporary lodging for overnight guests in return for compensation.

**BOARDING HOUSE.** A building other than a hotel, where lodging and meals are provided for more than six unrelated persons in return for compensation. When used in this chapter, the term Boarding House includes a transient boarding house.

**HOTEL/MOTEL.** A building or a part of a building, in which there are guest rooms, rooming units, or apartments which may be rented on a daily basis and are used primarily for transient occupancy, and for which desk service is provided. In addition, one or more of the following services may be provided: maid, telephone, bellboy, or furnishing of linen. When used in this chapter, the term hotel includes a motel.

**ROOMING HOUSE.** A building, other than a hotel, where lodging for more than six unrelated persons is provided without meals in return for compensation.

**1302 INSPECTIONS.** The code official shall make inspections to determine the condition of boarding houses, hotels, rooming houses, and bed and breakfast establishments located within the City, to ensure compliance with this chapter and other applicable laws. For the purpose of making inspections, the code official or the code official's representative may enter, examine, and survey, at all reasonable times, all buildings, dwelling units, guest rooms, and premises on presentation of the proper credentials. The owner or operator of a boarding house, hotel, rooming house, or bed and breakfast establishment, or the person in charge, shall give the code official free access to the building, dwelling unit, guest room and its premises, at all reasonable times, for the purpose of inspection, examination, and survey.

**1303 LICENSES AND PERMITS REQUIRED.** No person may operate a boarding house, hotel, rooming house, or bed and breakfast establishment unless a license for the operation, in the name of the operator and for the specific dwelling used, has been issued by the code official and is currently valid and in good standing. Unless specifically exempted by the provisions of Chapter 10-3 (Food and

Food Handlers) of the City Code, each boarding house and bed and breakfast establishment is required to have a permit as a food service establishment issued by the Health Authority.

#### 1304 LEASING OR RENTING ROOMS IN AN UNLICENSED HOTEL, BOARDING HOUSE, ROOMING HOUSE OR BED AND BREAKFAST ESTABLISHMENT IS AN OFFENSE

An owner, manager, or person in control of a hotel, boarding house, rooming house, or bed and breakfast establishment commits an offense if the owner or person leases, rents or otherwise induces occupancy of a room in a hotel, boarding house, rooming house, or bed and breakfast establishment which does not have a valid license issued and displayed as required by this chapter.

Each day that an owner, manager, or person in control of the property leases, rents or otherwise induces occupancy of a room in a hotel, boarding house, rooming house, or bed and breakfast establishment which does not have a valid license issued and displayed as required by this chapter is a separate occurrence. An offense under this section is a class C misdemeanor, punishable by a fine not to exceed \$500 per offense, per occurrence, unless proof of a culpable mental state is proven. If proof of a culpable mental state is demonstrated, an offense under this section is punishable by a fine not to exceed \$2000 per occurrence.

1305 APPLICATION. An application for a license required by this chapter must be in writing and submitted to the code official.

1306 FEE. Each application for a rooming house, hotel, boarding house, or bed and breakfast establishment license must be accompanied by the payment of a fee in an amount established by separate ordinance, to be pro-rated on a quarterly basis.

1307 ISSUANCE. A boarding house, hotel, rooming house, or bed and breakfast establishment license shall be issued by the code official after the code official determines that the owner or operator has complied with all applicable ordinances and rules. A license shall not be issued by the code official for any applicant or location in the absence of proof of the applicant or location's substantial compliance with all applicable local hotel occupancy tax rules and regulations.

1308 LICENSE SUSPENSION. Whenever the code official finds on inspection of the physical premises or review of applicable records of any boarding house, hotel, rooming house, or bed and breakfast establishment that conditions or practices exist that violate any provision of the International Property Maintenance Code, City Code, or any rule or regulation adopted under this code, the code official shall give written notice to the owner of the property and the operator of the boarding house, hotel, rooming house, or bed and breakfast establishment that unless the violations are corrected by an identified deadline, the boarding house, hotel, rooming house, or bed and breakfast establishment license shall be suspended. At the end of the time provided for correction of the violation(s), the code official shall re-inspect the location or records of the boarding house, hotel, rooming house, or bed and breakfast establishment and, if the conditions or practices have not been corrected, shall suspend the license and give written notice to the licensee that the license has been suspended. On receipt of notice of suspension, the licensee shall immediately stop operation of the boarding house, hotel, rooming house, or bed and breakfast establishment, and no person may occupy for sleeping or living purposes any rooming unit therein. The notice required by this subsection shall be served in accordance with the notice provisions of applicable law.

#### 1309 APPEAL FROM LICENSE SUSPENSION OR DENIAL

The following actions of the code official may be appealed to the Building and Standards Commission as provided in this Code:

1. the denial of an application for a license to operate a boarding house, hotel, rooming house, or bed and breakfast establishment;
2. the suspension of a license to operate a boarding house, hotel, rooming house, or bed and breakfast establishment;
3. the issuance of a notice that a license to operate a boarding house, hotel, rooming house, or bed and breakfast establishment will be suspended unless existing conditions or practices are corrected.

An appeal filed under this section must be filed with the code official no later than the 20th day following the date on which the license was denied or suspended, or notice of violation was received. The appeal must be set for hearing before the Commission on the next available agenda date following receipt of the appeal and must be heard following setting on the scheduled agenda if a quorum is present at the hearing, unless the appellant requests a later date and waives the scheduled hearing.

**1310 EXPIRATION.** Each boarding house, hotel, rooming house, and bed and breakfast establishment license expires at the end of the calendar year for which it is issued, unless suspended or revoked as provided in this chapter.

**1311 TRANSFER AND NOTICE ON SALE OF PREMISES.** A license issued under this chapter is not transferable. Every person holding a license shall give written notice to the code official no later than 10 days before the conveyance, transfer, or any other disposition of the ownership of, interest in, or control of any boarding house, hotel, rooming house, or bed and breakfast establishment. The notice must include the name and address of the person succeeding to the ownership or control of the boarding house, hotel, rooming house, or bed and breakfast establishment.

**1312 DISPLAY.** The license required by this chapter must be displayed at all times in a conspicuous place designated by the code official within each boarding house, hotel, rooming house, or bed and breakfast establishment.

**Attachment B: Guernsey Interpretation Letter**



**PLANNING AND DEVELOPMENT REVIEW DEPARTMENT**

P.O. Box 1088  
Austin, TX 78767

Ms. Leslie D. Rosenstein  
6619 Argentia Road  
Austin, TX 78757

March 12, 2011

Dear Ms. Rosenstein,

Thank you for your recent letter regarding short-term residential leases and vacation rentals by owner. I am responding on behalf of Mayor Lee Leffingwell and the City Council.

As you know, the Codes and Ordinances Committee of the Planning Commission and the full Planning Commission heard input on the issue and directed staff to continue to examine the issues related to short-term residential leases and vacation rentals by owner. As follow-up to those discussions, the January 27, 2011, meeting was held in order to allow property owners, neighbors and other concerned citizens an opportunity to express their views and make suggestions on how to move forward. We apologize for the conflict with the event at Palmer Auditorium and for not communicating the availability of parking at One Texas Center.

The issue is posted for discussion at the March 15<sup>th</sup> Codes and Ordinances Subcommittee meeting. During this meeting, staff will provide an update on the status of the proposed amendment, and legal staff will be present to discuss the classification of short term residential rentals in the land development code. The meeting will begin at 6:00 p.m., and will be held at One Texas Center, Room 325. A surface parking lot located at the front of the building, and a parking garage located to the rear of the building are available and offered to the public free of charge.

The Code Compliance Division continues to enforce all applicable regulations regarding residential housing. A rented residential structure, even one which is rented for a short period of time, is not classified as a Hotel/Motel land use under the existing City Land Use Code. While these uses are still classified as single family residential uses, the frequent rental of a single family home for short durations, can make the minor conflicts often experienced by all neighbors more difficult to resolve.

Staff is working to develop recommendations to facilitate the resolution of these issues and policies to support the livability of Austin's neighborhoods.

We welcome your continued input on this issue. If you have any further questions, you may contact Robert Heil, Senior Planner, Planning and Development Review Department, at 974-2330.

Sincerely,

Greg Guernsey, Director  
Planning and Development Review Department

x: Sue Edwards, Assistant City Manager  
Jerry Rusthoven, PDRD

Robert Heil, PDRD



**Re: Clarification of Use Classification Determination** Wednesday, March 23, 2011 11:37 AM

From: "David Orshalick" <dorshalick@yahoo.com>

To: Kathleen.Buchanan@ci.austin.tx.us

Cc: "Leslie Rosenstein" <lrosenstein@austin.rr.com>, "Greg Guernsey" <Greg.Guernsey@ci.austin.tx.us>

Kathleen,

Thanks for talking with me on the phone regarding clarification of the use classification determination by Greg Guernsey (see below).

If my understanding is correct, you verified that two decisions were made in Greg's letter to Leslie: that transient rentals in residential zoning are not hotel/motel use, and that transient rentals in residential zoning are classified as single family residential uses in code.

Sincerely,  
David Orshalick

--- On Tue, 3/22/11, David Orshalick <dorshalick@yahoo.com> wrote:

From: David Orshalick <dorshalick@yahoo.com>

Subject: Clarification of Use Classification Determination

To: Kathleen.Buchanan@ci.austin.tx.us

Cc: "Leslie Rosenstein" <lrosenstein@austin.rr.com>

Date: Tuesday, March 22, 2011, 12:15 AM

Kathleen,

Please be so kind as to clarify the "use classification determination", or administrative decision, made in Greg Guernsey's letter to Leslie Rosenstein dated March 12, 2011.

We are preparing an appeal of his interpretation of code to the BOA and wish to represent his interpretations accurately. We read his letter as saying two separate things:

1. A transient rental (30 days or less) in residential zoning is not classified as a hotel/motel use in code.
2. Transient rentals (30 day or less rentals of a single family home) in residential zoning are classified as single family residential uses in code.

We ask for this clarification in order for our appeal to be accurate, unambiguous, and specific. We ask for your response as soon as possible as time is of the essence in filing our appeal.

Thanks for your attention to this matter.

Sincerely,  
David Orshalick

Attachment D: Email from Greg Guernsey



**RE: BOA Appeal Form--Urgent--It doesn't work**

Tuesday, March 22, 2011 8:26 AM

**From:** "Guernsey, Greg" <greg.guernsey@ci.austin.tx.us>

**To:** "David Orshalick" <dorshalick@yahoo.com>

**Cc:** "Walker, Susan" <susan.walker@ci.austin.tx.us>, "Heil, Robert" <Robert.Heil@ci.austin.tx.us>, "Gibbs, Carol" <Carol.Gibbs@ci.austin.tx.us>, "Rusthoven, Jerry" <Jerry.Rusthoven@ci.austin.tx.us>, "Ramirez, Diana" <diana.ramirez@ci.austin.tx.us>

Hi David:

I checked with my Staff, but this is the only form we have available for an interpretation appeal. Attached is a link the BOA "Rules of Procedure." On page 2 of 7 is the Article 2 that addresses interpretation appeals and the applicable findings are found on page 3 of 7 (Paragraph D). It appears the appeal application is very similar, but not exactly matching the findings as listed under BOA Rules of Procedure. The response from my Department to Ms. Leslie Rosenstein was addressing her complaints about a property next door her home, a public meeting held on January 27<sup>th</sup> regarding vacation rentals by owners, the lack of code enforcement and an audit of hotel/motel occupancy taxes. Your arguments may be addressing a position contrary to the questions phrased in #2 and #3, but this is the only form that we have available for you to use. I would suggest that you proceed to use the existing form to the best of your ability and turn it in as soon as possible to Susan Walker or Diana Ramirez.

<http://www.ci.austin.tx.us/edims/document.cfm?id=134658>

Greg

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**From:** David Orshalick [mailto:dorshalick@yahoo.com]

**Sent:** Monday, March 21, 2011 6:49 PM

**To:** Guernsey, Greg

**Subject:** RE: BOA Appeal Form--Urgent--It doesn't work

Greg,

We can't use the form you indicate as it is non-sensical in this case--none of us is asking for something for our particular property. It is impossible in this circumstance to answer items 2. and 3. the way they are written--the logic is all wrong. Please supply us with a form that works in this situation.

Sincerely,  
David Orshalick

--- On Mon, 3/21/11, Guernsey , Greg <greg.guernsey@ci.austin.tx.us> wrote:

From: Guernsey, Greg <greg.guernsey@ci.austin.tx.us>

Subject: RE: BOA Appeal Form--Urgent



To: "David Orshalick" <dorshalick@yahoo.com>  
Cc: "Walker, Susan" <susan.walker@ci.austin.tx.us>  
Date: Monday, March 21, 2011, 5:39 PM

Hi David:

You may use the form you attached to your e-mail to addressed me today. You may file it as the appellant/applicant. I assume you are appealing the decision in the letter addressed to Ms. Leslie Rosenstein dated March 12, 2011 (see attached PDF). You may attach a separate letter or statement regarding your status as an interested party. You may choose to use that form to address the reasons you believe the decision does not comply with the requirements of the Code or attach a separate letter or statement. I hope this is helpful. You may also contact Susan Walker if you have additional questions.

Greg

---

**From:** David Orshalick [mailto:dorshalick@yahoo.com]  
**Sent:** Monday, March 21, 2011 3:41 PM  
**To:** Guernsey, Greg  
**Subject:** Fw: BOA Appeal Form--Urgent

Greg,

According to 25-1-183, the notice of appeal must be on a form prescribed by the responsible director or building official and must include:

- (1) the name, address, and telephone number of the appellant;
- (2) the name of the applicant, if the appellant is not the applicant;
- (3) the decision being appealed;
- (4) the date of the decision;
- (5) a description of the appellant's status as an interested party; and
- (6) the reasons the appellant believes the decision does not comply with the requirements of this title.

As explained in my previous email below, the current Interpretation Appeal form you have made available does not quite work (see items 1. and 2.) for our appeal of your March 12 transient rental administrative decision (use classification determination).

Please respond to my emails so we can finish our appeal application.

Thanks,  
David Orshalick

--- On Thu, 3/17/11, David Orshalick <dorshalick@yahoo.com> wrote:

From: David Orshalick <dorshalick@yahoo.com>  
Subject: BOA Appeal Form--Urgent

To: "Susan Walker" <susan.walker@ci.austin.tx.us>  
Cc: "GregGuernsey" <greg.guernsey@ci.austin.tx.us>, "DianaRamirez" <diana.ramirez@ci.austin.tx.us>, "RobertHeil" <Robert.Heil@ci.austin.tx.us>, "BrentLloyd" <Brent.Lloyd@ci.austin.tx.us>, "Leslie Rosenstein" <lrosenstein@austin.rr.com>, "Paulette Kern" <paulettekern@sbcglobal.net>, "Edward L. Robinson" <elr@pisces.as.utexas.edu>, MFAANCON@aol.com, cbkeohane@prodigy.net, dbmc@texas.net, joe-rey@texas.net, wsgordon@prodigy.net, zane@zanecorp.com, "Kata F. Carbone" <kata@mail.utexas.edu>  
Date: Thursday, March 17, 2011, 3:18 PM

Susan,

Thank you for the BOA variance and appeal forms and for meeting with me today.

As we discussed, the BOA Interpretation Appeal is usually made by a property owner who seeks a use of his property denied by the code interpretation of the Director or other designated official. Usually, the appeal form you sent is appropriate. However, the appeal we wish to make in this case is not covered by the appeal form you sent.

Our appeal is for a restriction of the use classification determination made by Director Guernsey. His interpretation of code is not just for one property but for any properties zoned residential in Austin .

According to code, the Director supplies the forms used before the BOA. I promised you that I would make a stab at modifying the wording of the appeal form so it would work in this case. Here are possible rewrites of items 2. and 3. of the form you sent:

2. An appeal of the interpreted use provisions could clearly restrict a use which is out of character with the uses enumerated for, and with the objectives of, the zone in question because:

3. The interpretation will grant a special privilege to one class of property inconsistent with other properties or uses similarly situated in that:

Please supply us with a new appeal form that will apply to this situation as soon as possible. An email from Director Guernsey approving these modifications to the form will suffice. As you and I discussed, we are meeting this weekend to prepare our appeal, so having the new form wording will be necessary.

If I have not cc'd the appropriate people, please forward as necessary.

It is my understanding, pursuant to 25-1-182 (2), that we have until March 31 to file the appeal and that it will appear on the May 9 BOA agenda.

Also, given the general nature of this interpretation, that the City has failed to protect the welfare and safety of Austin neighborhoods, and that several residential property owners will be filing this appeal on behalf of Austin citizens, we ask that the \$360 filing fee for this appeal be waived.

Thanks for your attention to this matter. I look forward to your reply.

Sincerely,

David Orshalick

--- On Thu, 3/17/11, Walker , Susan <susan.walker@ci.austin.tx.us> wrote:

From: Walker, Susan <susan.walker@ci.austin.tx.us>  
Subject: RE: BOA Appeal and Variance Forms  
To: "David Orshalick" <dorshalick@yahoo.com>  
Date: Thursday, March 17, 2011, 9:46 AM

Here are the Interpretation and Variance applications that you have requested. I was not aware that the forms were not coming up on the website. I will have someone check into this.

Thank you,

**Susan Walker**  
**Senior Planner**  
**Planning & Development Review Department**  
**Phone: 512-974-2202**  
**Fax: 512-974-6536**

---

**From:** David Orshalick [mailto:dorshalick@yahoo.com]  
**Sent:** Tuesday, March 15, 2011 11:37 PM  
**To:** Walker, Susan  
**Subject:** BOA Appeal and Variance Forms

Susan,

Please send me the link to the BOA Appeal and Variance forms. They don't seem to come up in any searches on the City website.

Also, could you put these forms up on the BOA webpage?

Does the Appeals form work for an appeal of a Use Classification Determination by the PDRD Director?

Thanks,  
David Orshalick  
971-1895

**ARTICLE 1. GENERAL PROCEDURES.**

(A) Refusal Required. No appeal shall be taken until and unless the responsible city official has first determined that a permit requires a variance or has rendered an interpretation of the regulations in question.

(B) Application Requirements. All appeals shall be filed on an application form provided by the staff liaison and shall be complete in all respects before being accepted for filing. The Board shall not act upon an application that is either substantially nonconforming or incomplete.

**ARTICLE 2. SUBSTANTIVE REQUIREMENTS FOR INTERPRETATION APPEALS**

(D) Findings. The Board shall make such interpretation as ought to be made. The Board may grant an appeal if it makes all of the following findings.

(1) There is reasonable doubt or difference of interpretation as to the specific intent of the regulations.

(2) The resulting interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated.

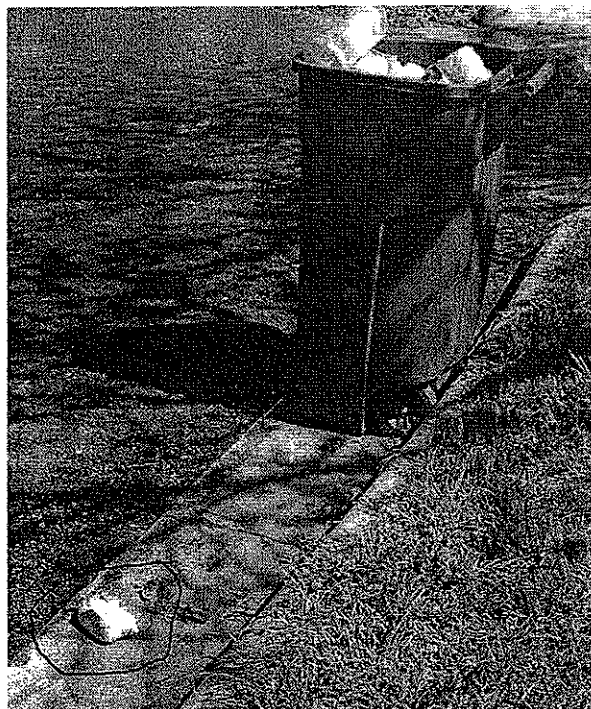
(3) When use provisions are being appealed, granting the appeal would clearly permit a use in character with the uses enumerated for the various districts and with the objective of the district in question.

## Attachment F: Some Problems with Transient Rentals

Example of what can happen when unsupervised strangers sleep next door. This mess (burned mattress) remained in the front yard of this transient rental for several days



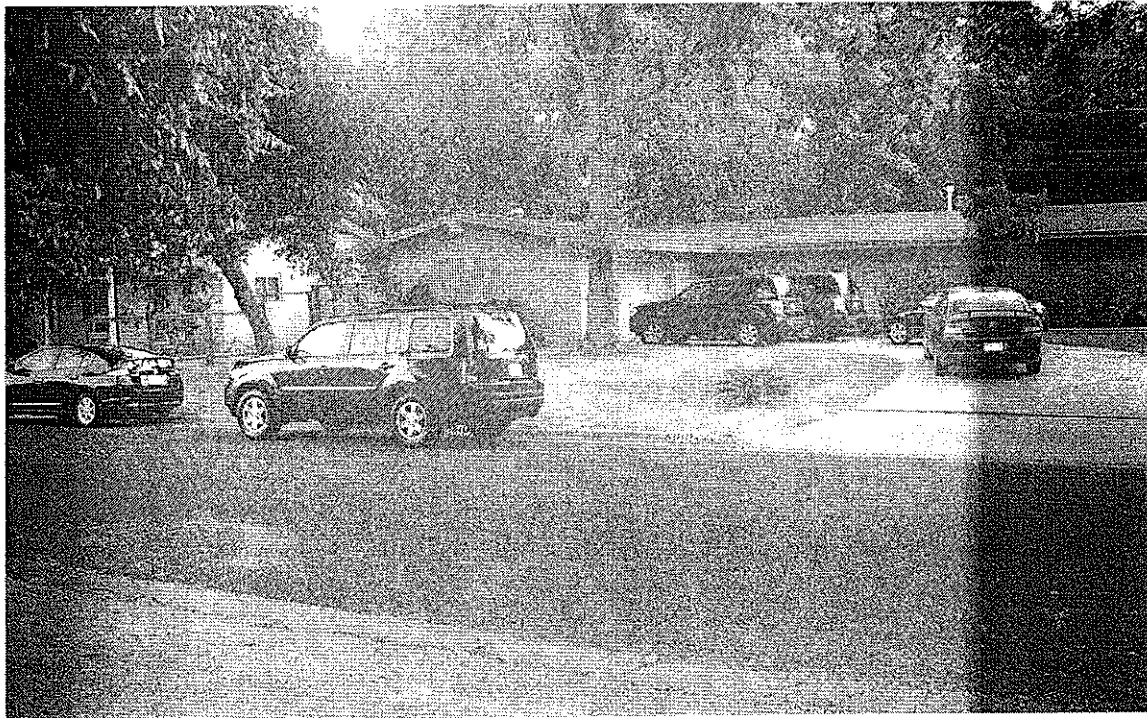
Noncompliance with acceptable trash maintenance (used diaper circled in red) left by "guests" at this transient rental



An illegal business sign posted at this transient rental for “Hancock Guest Cottages”


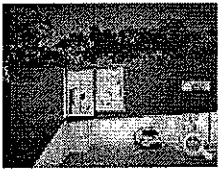




Six cars parked overnight at this transient rental—the following morning there were seven



## Attachment G: Transient Rental Marketing

Typical Internet marketing showing properties that routinely exceed the residential occupancy limit established by City Code 25-2-511 (A) (1): "not more than six unrelated persons may reside in a dwelling unit".

	<p><b>Relax by the pool in total privacy...</b></p> <p>7 Bedrooms, 4 Bathrooms, 1 Half Bath, Sleeps 16</p> <p>Austin area, Austin Vacation Rentals</p> <p>34 Reviews #169977</p>	<p><b>\$700 - \$850 night</b></p> <p><b>\$4,750 week</b></p> <p><input type="checkbox"/> Compare</p>
	<p><b>Kimber Modern B &amp; B - Amazing Architecture, European Luxury, Hip Soco Area</b></p> <p>7 Bedrooms, 7 Bathrooms, 1 Half Bath, Sleeps 14</p> <p>Austin area, Austin Vacation Rentals</p> <p>#194150</p>	<p><b>\$1,675 - \$1,970 night</b></p> <p><b>\$12,315 week</b></p> <p><input type="checkbox"/> Compare</p>
	<p><b>4500 sqft Casa Grande near Barton Springs- Walking to Restaurant Row &amp; Downtown</b></p> <p>6 Bedrooms, 5 Bathrooms, Sleeps 13</p> <p>Austin area, Austin Vacation Rentals</p> <p>15 Reviews #299446</p>	<p><b>\$700 night</b></p> <p><input type="checkbox"/> Compare</p>
	<p><b>Elegant, historic home in Downtown Austin. Walk to Whole Foods, Zilker Park</b></p> <p>6 Bedrooms, 6 Bathrooms, Sleeps 12</p> <p>Austin area, Austin Vacation Rentals</p> <p>#374164</p>	<p><b>\$450 - \$1,650 night</b></p> <p><b>\$2,500 - \$7,000 week</b></p> <p><b>\$4,500 - \$11,000 month</b></p> <p><input type="checkbox"/> Compare</p>

Typical Internet marketing reviews showing unlicensed provision of food and alcohol to transient rental guests

Rating

★★★★★ 5 out of 5

**Awesome Rental!!**

Sandee Racine, WI

Review Submitted: November 22, 2010 Date of Stay: October 2010

My boyfriend and I rented this property Summer of 2010. Ron supplied everything we needed!! It was bigger than a hotel room, but not more than we needed. It was immaculately clean, had snacks, a Keurig coffee maker (which we will now be purchasing) and a w/d.

Rating

★★★★★ 5 out of 5

**Great for families--large or small!**

El Jefito Berlin, Germany

Review Submitted: August 30, 2010 Date of Stay: July 2010

Our family stayed at this house for five weeks during our summer vacation.

As a former Austinite, I was a bit reluctant about the location because I feel more at home down south, but Halcyon House changed my mind. Its location next to the bike trails, 10 minute walk to a nearby pool, and quick access to Burnet Road or Mopac makes staying here an excellent choice. If you can beat the traffic, you can get anywhere North or South as well as East and West quite quickly. As a matter of fact, a trip to the airport takes about 20 minutes if you head southeast rather than downtown, and you can make it back from the clubs in little time.

The house itself is quite spacious. The bedrooms comfortably accommodated our family of four plus a few guests. There are enough rooms upstairs and downstairs for people to come together or be alone as they wished. Although the bathrooms may a bit small for larger persons, we never had a problem with 2.5 bathrooms. The kitchen and laundry room are well furnished with new appliances rather than hand-me-downs. Although we could never quite figure out how to efficiently load the dishwasher, it took care of everything that we threw at it.

The owners are incredibly helpful and they delight in making little touches memorable. Whether its fresh cut flowers and a bottle of wine to help you start your stay or the delivery of fresh eggs from their own backyard coup, they know how to take care of their guests' wishes--and more!

We would like to return here again and recommend it to others, especially if you are considering a relocation to Austin and you want to try out the Allandale neighborhood.



David Orshalick  
2710 West 49<sup>th</sup> ½ Street  
Austin, TX 78731

April 21, 2011

Board of Adjustment  
City of Austin  
P.O. Box 1088  
Austin, TX 78767

Re: Case #C15-2011-0037 Interpretation Appeal by Cynthia Keohane  
Case #C15-2011-0038 Interpretation Appeal by Leslie Rosenstein

Dear Chair and Members of the Board of Adjustment,

I am writing in support of the above-referenced appeals. On March 12, Director Guernsey made a Use Classification Determination that affects *every resident in Austin*. He ruled that "the frequent rental of a single family home for short durations" is classified as a single-family residential use. In other words, transient (30 days or less) rentals in residential zoning are classified as single family residential uses in Code.

This determination disregards the intent and purpose of City Code, PDR's *Neighborhood Planning Guide*, and the *Imagine Austin* Comprehensive Plan's *Vision Statement*. It corrupts the character of our family-oriented neighborhoods and opens the floodgates to transient rentals perpetually hosting new "guests" at the expense of residents. Creation of a new undefined transient residential use also removes countless homes from the housing stock.

Preservation of our neighborhoods—our most important asset and what makes Austin such a desirable place to live—is at the core of the residential zoning Codes. For example, City Code 25-2-51 states that the purpose of the residential district is to "reserve areas for residential occupancy". Short-duration stays are, by definition, not "residential" in nature; if someone stays short term in a house, they do not live there—they are merely visiting.

City Code 25-2-3 states that residential uses include the "occupancy of living accommodations on a nontransient basis", and that "single-family residential use is the use of a site for only one dwelling unit". Transient occupancy does not constitute a residential use according to City Code.

If these Code sections are not clear enough, the PDR *Neighborhood Planning Guide Land Use Standard* declares its purpose as a "framework for decision making" that offers "guidance to city staff, Planning Commission, City Council, developers, neighbors, and others on what kinds of land uses are encouraged or discouraged in a particular area." For residential zoning, the *Planning Guide* states that the purposes of "single family detached or two family residential uses" are to **"preserve the future viability of existing neighborhoods"** and to **"protect residential neighborhoods from incompatible business and the loss of existing housing"**. The *Planning Guide* also states general land use planning principles that include: ensuring an "adequate and diverse supply of housing for all income levels", minimizing "negative effects between incompatible land uses", and avoiding creating "undesirable precedents". This determination completely disregards City Code and the PDR *Planning Guide*.

Article 2 of the BOA Rules of Procedure requires three findings in order for the BOA to grant this Use Classification Determination appeal: (1) a reasonable doubt or difference of

interpretation of Code, (2) an interpretation that will not grant a special privilege, and (3) use provisions which are in character with the uses and objectives of the district in question.

Evidence for finding (1) was briefly presented above and is presented in much more detail in *Attachment A: Brief Summary of Restrictions* and in *Attachment B: Code Restrictions on "Transient Residential" Uses*.

For finding (2), granting this appeal removes the special privilege conferred on transient rental property owners by this Use Classification Determination. Transient rentals are unregulated whereas their competitors (B&B's, rooming and boarding houses, hotels) are regulated and supervised. There are no inspectors assigned, and no regulations in force, for the use of transient rentals in residential zoning, so this determination ignores health and safety concerns addressed by licensed and regulated competitors. In addition, this unfair and unregulated competition may damage hotels, cost the City in revenue and increased costs, and endanger the public.

Neither the City nor transient rental property owners can guarantee the peaceful and quiet enjoyment of our neighborhoods as indicated by a long list of unresolved 311 complaints. These commercial uses will always be a nuisance in our neighborhoods regardless of new regulations. The burden and cost of enforcement shifts to the City at the expense of residents and to the benefit of transient rental property owners. A true and full accounting of these costs, as well as a cost/benefit analysis, should have been undertaken before making this determination and granting this special privilege.

Unsupervised and unregulated transient rentals are not—and never have been—an allowed single-family residential use. However, it is reasonable to allow property owners to occasionally rent out their own houses during events such as SXSW or to swap houses for short vacation stays. In order to protect and preserve the character and safety of our neighborhoods, safeguards must be in place. *Attachment C: Draft Model Ordinance—Owner-Occupied Transient Rental Use* was crafted to allow home owners flexibility in the use of their property while causing the least amount of disruption and burden to adjacent residents. (It has been sent to the Planning Commission for review and consideration.) Rental of residential property for more than 30 days (nontransient) is not covered by this model ordinance since it is already an allowed residential use in City Code.

For finding (3), granting this appeal maintains the uses enumerated in City Code 25-2-3 and does not create a new use that is out of character with the uses and objectives of residential zoning. Also, transient rental property owners will not be denied these existing uses under Code since they can simply rent their residential structures on a nontransient (more than 30 days) basis.

Today there are 10 B&B's in Austin, but, due to the efficiency of Internet marketing, there are hundreds of transient residential rentals. In five years there will be thousands if this determination is allowed to stand. Mr. Guernsey erred in his determination. We ask that you preserve the neighborhood character of Austin as required by City Code. Thank you for your consideration and your service to Austin.

Sincerely,

  
David Orshalick

## Attachment A: Brief Summary of Restrictions

Find an expansion of this in *Attachment B: Code Restrictions on "Transient Residential" Uses*.

Excerpt	Source
TRANSIENT. Occupancy of a dwelling or sleeping unit for <b>not more than 30 days</b> .	2009 International Building Code, Section 310.2 Definitions. City Code 25-12-1 BUILDING CODE. (A) The 2009 International Building Code is adopted and incorporated into this section.
"Residential" does <b>not</b> have the character of a facility used for the accommodation of <b>transient guests</b> .	Texas Local Government Code, Chapter 214 MUNICIPAL REGULATION OF HOUSING AND OTHER STRUCTURES. Sec. 214.211
The purposes of the <b>residential district</b> : <b>reserve areas for residential occupancy</b> consistent with the Comprehensive Plan and standards of public health, safety, and welfare.	City Code 25-2-51 PURPOSES OF RESIDENTIAL DISTRICTS
Residential uses include the occupancy of <b>living accommodations</b> on a <b>nontransient basis</b> .	City Code 25-2-3 RESIDENTIAL USES DESCRIBED.
(11) SINGLE-FAMILY RESIDENTIAL use is the use of a site for only one <b>dwelling unit</b> .	City Code 25-2-3 RESIDENTIAL USES DESCRIBED.
In making a determination under this section, the director of the Neighborhood Planning and Zoning Department shall consider the <b>characteristics</b> of the proposed use and the <b>similarities</b> , if any, of the use to other classified uses.	City Code 25-2-2 DETERMINATION OF USE CLASSIFICATION.
While these uses are still classified as single family <b>residential uses</b> , the frequent rental of a single family home for short durations, ...	Use Classification Determination letter of March 12, 2011 by PDR Director Guernsey
Single family detached or two family residential uses. Purpose. (1) Preserve the <b>future viability of existing neighborhoods</b> ; (3) Protect residential neighborhoods from incompatible business and the <b>loss of existing housing</b> .	City of Austin Neighborhood Planning Guide Land Use Standard May 2008.
Land Use Planning Principles. (2) Ensure an <b>adequate and diverse supply of housing</b> for all income levels; (3) Minimize negative effects between incompatible land uses; (13) Avoid creating undesirable precedents.	City of Austin Neighborhood Planning Guide Land Use Standard May 2008.
Austin is livable. One of Austin's foundations is its safe, well-maintained, stable, and attractive neighborhoods ... where <b>community needs</b> and values are recognized. ... Development occurs ... while <b>protecting and enhancing neighborhoods</b> ... People across all parts of the city and of all ages and income levels live in <b>safe, stable neighborhoods</b> .	Imagine Austin Comprehensive Plan Vision Statement.

## Attachment B: Code Restrictions on “Transient Residential” Uses

On March 12, PDR Director Greg Guernsey made a Use Classification Determination stating that “the frequent rental of a single family home for short durations” is classified as a single-family residential use. This determination disregards the intent and purpose of City Code as well as PDR’s *Neighborhood Planning Guide*. It corrupts the character of family-oriented neighborhoods and opens the floodgates to transient rentals perpetually hosting new “guests” at the expense of residents. This determination is clearly outside the concept of “residential” zoning.

The following table presents the relevant City Code and supporting materials showing that unsupervised and unregulated transient rentals are not—and never have been—an allowed single-family residential use.

Source Material	Commentary
<p>City Code 1-1-3 WORDS AND PHRASES. (A) Words and phrases shall be read in context and construed according to the rules of grammar and common usage. (B) Words and phrases that have acquired a technical or particular meaning, whether by definition or otherwise, shall be construed accordingly.</p>	<p>In any statutory interpretation, the plain meaning of ordinary English words in their ordinary senses is assumed.</p>
<p>Dictionary.com definitions:</p> <p><i>Residential</i>—suited for or characterized by private residences: <i>a residential neighborhood</i>; relating to or having residence.</p> <p><i>Residence</i>—the place, especially the house, in which a person lives or resides; dwelling place.</p> <p><i>Reside</i>—to dwell permanently or for a considerable time.</p> <p><i>Dwell</i>—to live or stay as a permanent resident.</p> <p><i>Dwelling</i>—a building or place of shelter to live in; place of residence; abode; home.</p>	<p>Short-duration stays are, by definition, not “residential” in nature. The term “short-term residential” as a use or rental is an oxymoron. If someone stays short term in a house, then they do not live there—they are not using it as their residence. An easy test of “residency” is to ask where a person votes.</p>
<p>City Code 25-12-1 BUILDING CODE. (A) The 2009 International Building Code published by the International Code Council is adopted and incorporated into this section.</p> <p><i>2009 International Building Code, Section 310.2</i></p> <p><b>Definitions. TRANSIENT. Occupancy of a dwelling or sleeping unit for not more than 30 days.</b></p>	<p>The <i>2009 International Building Code</i> is made part of City Codes and clearly defines the word “transient” as 30 days or less.</p>

Source Material	Commentary
<p>Texas Local Government Code, Chapter 214 MUNICIPAL REGULATION OF HOUSING AND OTHER STRUCTURES. Sec. 214.211 DEFINITIONS. (3) "Residential" means having the character of a detached one-family or two- family dwelling or a multiple single-family dwelling that is not more than three stories high with separate means of egress, including the accessory structures of the dwelling, and that does not have the character of a facility used for the accommodation of transient guests. (5) "Commercial" means a building for the use or occupation of people for: (A) a public purpose or economic gain.</p>	<p>This state statute covers the building of residentially zoned structures with the clear expectation that those structures will be used for nontransient purposes. In other words, when a residential building permit is issued, the resulting use is intended to be nontransient. In fact, transient rentals are defined as a "commercial" use by this section of state statute.</p>
<p>City Code 25-2-51 PURPOSES OF RESIDENTIAL DISTRICTS. The purposes of the residential district designations are to: (1) reserve areas for residential occupancy and provide for a broad range of residential densities and variety of housing types consistent with the Comprehensive Plan and standards of public health, safety, and welfare; (2) ensure adequate light, air, privacy, and open space for each dwelling; (3) encourage compatibility between residential uses and other land uses.</p>	<p>The clear purpose of residentially-zoned structures is for residential occupancy, not transient occupancy. The latest Vision Statement for the Comprehensive Plan precludes transient rentals as a residential use.</p> <p>Transient rentals of residential structures are an incompatible use in residential zoning. They detract from the character of family-oriented neighborhoods; threaten the health, safety, welfare, and privacy of residents; displace families; remove housing stock; and cater to non-residents who have little incentive to be good neighbors.</p>

Source Material	Commentary
<p>City Code 25-2-1 USE CLASSIFICATIONS. The major use categories are residential, commercial, industrial, civic, and agricultural.</p> <p>City Code 25-2-3 RESIDENTIAL USES DESCRIBED.</p> <p>(A) Residential uses include the occupancy of <u>living accommodations on a nontransient basis</u>.</p> <p>(B) Residential use classifications are described as follows:</p> <ol style="list-style-type: none"> <li>(1) BED AND BREAKFAST RESIDENTIAL</li> <li>(2) CONDOMINIUM RESIDENTIAL</li> <li>(3) CONSERVATION SINGLE FAMILY RESIDENTIAL</li> <li>(4) DUPLEX RESIDENTIAL</li> <li>(5) GROUP RESIDENTIAL</li> <li>(6) MOBILE HOME RESIDENTIAL</li> <li>(7) MULTIFAMILY RESIDENTIAL</li> <li>(8) RETIREMENT HOUSING (LARGE SITE)</li> <li>(9) RETIREMENT HOUSING (SMALL SITE)</li> <li>(10) SINGLE-FAMILY ATTACHED RESIDENTIAL</li> <li>(11) <u>SINGLE-FAMILY RESIDENTIAL use is the use of a site for only one dwelling unit, other than a mobile home.</u></li> <li>(12) SMALL LOT SINGLE-FAMILY RESIDENTIAL</li> <li>(13) TOWNHOUSE RESIDENTIAL</li> <li>(14) TWO-FAMILY RESIDENTIAL</li> </ol>	<p>Non-residential uses, such as transient rentals, are allowed in other major use categories.</p> <p>Of these 14 defined residential uses in the list of residential use classifications, all but two are nontransient. Yet even these two—Bed and Breakfast Residential and Group Residential—are heavily regulated by other Code provisions and require the owner or owner's agent to reside permanently (have a nontransient presence) on the property.</p> <p>While an unregulated and unsupervised <i>transient</i> use is not allowed by Code, <i>nontransient</i> residential rentals are, and always have been, an allowed residential use. Nothing in Code prevents residential property owners from renting their property on a nontransient basis: greater than 30 days.</p> <p>A dwelling unit (a place of residence) cannot be construed to allow accommodation of transient non-residents. There is nothing in the definition of single-family residential use that allows for transient occupancy.</p>
<p>City Code 25-2-2 DETERMINATION OF USE CLASSIFICATION. (A) The director of the Neighborhood Planning and Zoning Department shall <u>determine the appropriate use classification for an existing or proposed use or activity.</u> (B) In making a determination under this section, the director of the Neighborhood Planning and Zoning Department shall <u>consider the characteristics of the proposed use and the similarities, if any, of the use to other classified uses.</u></p>	<p>The Director of PDR is empowered by Code to interpret use classifications, not to create new ones in contravention of Code. In addition, he must consider the characteristics and similarities of a use with other classified uses.</p>

Source Material	Commentary
<p>Use Classification Determination letter of March 12, 2011 by PDR Director Guernsey states: "[1] A rented residential structure, even one which is rented for a short period of time, is not classified as a Hotel/Motel land use under the existing City Land Use Code. [2] While these uses are still classified as single family residential uses, the frequent rental of a single family home for short durations, can make the minor conflicts often experienced by all neighbors more difficult to resolve."</p>	<p>While hotel/motel use is not allowed in residential zoning, it is not in dispute as a commercial use. Transient rentals are, by definition, not "residential" use since people do not reside, dwell, or live permanently in these structures. The Director of PDR cannot ignore the characteristics and similarities with other uses in his determination since Bed and Breakfast use is a more closely related transient use than Single-Family Residential.</p>
<p>25-2-6 CIVIC USES DESCRIBED. (B)(22) GROUP HOME CLASS I</p> <p>25-2-781 BED AND BREAKFAST RESIDENTIAL USE STRUCTURES CLASSIFIED.</p> <p>25-2-782 GENERAL REQUIREMENTS FOR A BED AND BREAKFAST RESIDENTIAL USE.</p> <p>25-2-783 NUMBER OF ROOMS.</p> <p>25-2-784 PARKING REQUIREMENTS.</p> <p>25-2-841 GROUP AND FAMILY HOMES.</p> <p>25-12-213 LOCAL AMENDMENTS TO THE INTERNATIONAL PROPERTY MAINTENANCE CODE. CHAPTER 13 HOTEL, BOARDING HOUSE, ROOMING HOUSE, AND BED AND BREAKFAST ESTABLISHMENT REGULATIONS.</p> <p>1301 DEFINITIONS. 1302 INSPECTIONS.</p> <p>1303 LICENSES AND PERMITS REQUIRED.</p> <p>1304 LEASING OR RENTING ROOMS IN AN UNLICENSED HOTEL, BOARDING HOUSE, ROOMING HOUSE OR BED AND BREAKFAST ESTABLISHMENT IS AN OFFENSE.</p> <p>1305 APPLICATION. 1306 FEE. 1307 ISSUANCE.</p> <p>1308 LICENSE SUSPENSION. 1309 APPEAL FROM LICENSE SUSPENSION OR DENIAL.</p> <p>1310 EXPIRATION.</p> <p>1311 TRANSFER AND NOTICE ON SALE OF PREMISES.</p> <p>1312 DISPLAY.</p>	<p>The two exceptions to transient rental use in residential zoning—Bed and Breakfast Residential and Group Residential—are heavily regulated by other Code provisions and require the owner or owner's agent to reside permanently (have a nontransient presence) on the property. The list of ordinances regulating these uses is extensive and serves as the basis for a model ordinance (see the document <i>Model Ordinance: Owner-Occupied Transient Rental</i>).</p> <p>An unregulated and unsupervised transient rental of residential property clearly contravenes the intent and purpose of Code and threatens the health, safety, and welfare of the public.</p>

Source Material	Commentary
<p>City Code CHAPTER 11-2. HOTEL OCCUPANCY TAX. 11-2-1 DEFINITIONS. In this chapter: (3) HOTEL means a building in which members of the public may obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or other building where a room is furnished for a consideration.</p> <p>11-2-2 TAX LEVIED; EXCEPTIONS. (A) A tax of seven percent of the consideration paid for a hotel room is levied on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays the consideration for the use or possession or for the right to the use or possession of a hotel room that costs two dollars or more each day and is ordinarily used for sleeping. (B) This chapter does not impose a tax on (1) a person who has the right to use or possess a hotel room for at least 30 consecutive days, so long as there is no interruption of payment for the period.</p> <p>11-2-3 COLLECTION OF TAX GENERALLY. (A) A person who owns, operates, manages, or controls a hotel or collects payment for the use or possession or for the right to the use or possession of a hotel room shall collect the tax levied by this chapter for the City. (B) A person who collects the tax shall deposit the tax proceeds into in a separate liability account and may not use the tax proceeds for any purpose other than payment to the City.</p>	<p>Both the City and the State (Texas Tax Code CHAPTER 156. HOTEL OCCUPANCY TAX) recognize transient rentals as a special, taxable, commercial use of property by their Hotel Occupancy Tax (HOT) provisions.</p> <p>HOT must be collected and remitted for any hotel room occupied for less than 30 days. This chapter of Code clearly includes transient rentals in residential zoning; the City Controller's office will confirm that the owner of any room rented for more than \$2 per day—including transient rentals in residential zoning—must register, collect, and remit HOT. Since the City already collects HOT from at least 50 transient rentals in residential zoning in Austin (in addition to collections from B&amp;B's), this serves as prima facie evidence of their "transient" use in residential zoning.</p> <p>According to the City Controller's office, all 10 B&amp;B's in Austin pay HOT, while only 80 of the over 250 transient rentals in Austin do. B&amp;B owners know to pay the tax because they are licensed and regulated, while other transient rentals are not. In any event, the definition of HOTEL for the purposes of this chapter in Code clearly includes transient rentals and does not require a code amendment for clarity.</p>



Source Material	Commentary
<p>City of Austin <i>Neighborhood Planning Guide to Land Use Standard</i> May 2008.</p> <p>[Page 4] Why do we practice land use planning? A key function of land use plans is to ensure that land use decisions take into account the needs of communities, the economy and the environment. A Framework for Decision Making. The plans offer guidance to city staff, Planning Commission, City Council, developers, neighbors, and others on what kinds of land uses are encouraged or discouraged in a particular area. This guidance provides direction for decision makers about future land uses.</p> <p>[Page 14] Single family detached or two family residential uses at typical urban and/or suburban densities. Purpose. (1) Preserve the land use pattern and future viability of existing neighborhoods; (3) Protect residential neighborhoods from incompatible business or industry and the loss of existing housing.</p> <p>[Page 8] Land Use Planning Principles. (2) Ensure an adequate and diverse supply of housing for all income levels; (3) Minimize negative effects between incompatible land uses; (5) Discourage intense uses within or adjacent to residential areas; (13) Avoid creating undesirable precedents; (15) Ensure similar treatment of land use decisions on similar properties; (16) Balance individual property rights with community interests and goals; (18) Promote development that serves the needs of a diverse population.</p>	<p>The Planning and Development Review Department publishes this planning guide describing land use policy.</p> <p>Given the <i>Guide's</i> stated purposes of single family residential uses and of land use planning principles, the unsupervised and unregulated transient rental of residential structures is clearly an incompatible use and sets a dangerous precedent.</p> <p>Transient rentals in residential zoning are out of character with the clear purpose and land use of residential neighborhoods: they negate community and remove housing stock.</p>

Source Material	Commentary
<p><i>Imagine Austin Comprehensive Plan Vision Statement. A Vision for Austin's Future.... Austin is a beacon of sustainability, social equity and economic opportunity... where community needs and values are recognized.... Austin is livable. One of Austin's foundations is its safe, well-maintained, stable, and attractive neighborhoods and places whose character and history are preserved. Development occurs... while protecting and enhancing neighborhoods... in a manner friendly to families with children, seniors, and individuals with disabilities. Clear guidelines... provide certainty for residents and the business community.... Austin values and respects its people. People across all parts of the city and of all ages and income levels live in safe, stable neighborhoods with a variety of affordable and accessible homes.</i></p>	<p>A vision statement is "a reflection of community values and aspirations, a consensus of public opinion on key issues, and a description of the desired future character of the community". Residents of Austin have volunteered thousands of hours to help City staff craft a responsive Comprehensive Plan.</p> <p>Some have questioned the sincerity of the collaborative spirit and the validity of the planning process. By creating a transient single-family residential use by fiat that is contrary to Code, State statute, PDR Planning Guide, and Comprehensive Plan, the Director of PDR demonstrates that the Comprehensive Plan is a sham.</p> <p>Austinites cannot continue to work seriously on a Plan rendered a sham by allowing an unsupervised and unregulated transient residential use.</p> <p>The Vision Statement points to stable neighborhoods for the benefit of Austin residents. Unsupervised, unregulated, and clearly illegal transient uses destabilize and destroy Austin neighborhoods.</p>

## Attachment C: Draft Model Ordinance—Owner-Occupied Transient Rental Use

Unsupervised and unregulated transient residential use endangers public health, safety, and welfare, and destroys the character of family-oriented neighborhoods. It is contrary to the very notion of “residential” as places where people live on a permanent basis. A model ordinance for Owner Occupied Transient Rental (OOTR) use, based in large part on City Code for the similar Bed and Breakfast use, is shown in the table below. The amended or changed Code sections are highlighted.

It is reasonable to allow property owners to occasionally rent out their own houses during events such as SXSW or to swap houses for short vacation stays. However, in order to protect and preserve our neighborhoods, safeguards must be in place. This model ordinance was crafted to allow home owners flexibility in the use of their property while insuring the integrity and character of Austin neighborhoods and causing the least amount of disruption and burden to adjacent residents.

In this model ordinance, transient rental residential use by a home owner is limited to no more than two separate rentals in a calendar year, and with a combined duration of no more than 30 days, since any more is too disruptive of neighborhood life and is really not a residential use of the property.

In addition, transient rental use by investors, rather than home owners, is prohibited since it removes housing stock, which is contrary to the City’s neighborhood planning guidelines, and to the express purpose of residential zoning (City Code 25-2-51). Of course, rental of any residential property for more than 30 days (nontransient) is not covered by this model ordinance since it is already—and has always been—an allowed residential use in City Code.

OOTR Amendments	Source Notes
<p>25-2-3 RESIDENTIAL USES DESCRIBED.</p> <p>(B) Residential use classifications are described as follows:</p> <p>(15) OWNER OCCUPIED TRANSIENT RESIDENTIAL use is the unsupervised use of a residential structure to provide occasional furnished guest accommodations on a paying basis.</p>	<p>Adds an OOTR residential use to the existing 14 residential uses in this section of City Code</p>
<p>Subpart C. Requirements for an Owner-Occupied Transient Use</p> <p>25-2-738 OWNER OCCUPIED TRANSIENT RESIDENTIAL USE STRUCTURES CLASSIFIED</p> <p>(A) Any conforming residential structure may be used as an owner-occupied transient rental use in any residential base district as long as the occupancy limits set by section 25-2-51.1 (Housing Unit Occupancy Limit) for the property are not exceeded before or during the transient rental.</p> <p>(B) The use of a residential unit for an owner-occupied transient rental use shall not violate any applicable conditions, covenants, or other restrictions on real property.</p>	<p>Adds a new Subpart C in Code based on the content from <i>Subpart B. Requirements for a Bed and Breakfast Use</i>.</p> <p>Covenants clause from Monterey County, CA zoning ordinance Title 21</p>

OOTR Amendments	Source Notes
<p>25-2-789 GENERAL REQUIREMENTS FOR AN OWNER-OCCUPIED TRANSIENT RESIDENTIAL USE.</p> <p>(A) A person may own only one owner-occupied transient residential use facility.</p> <p>(B) The owner must reside in the owner-occupied transient residential use structure or in another residential structure on the lot on which the structure is located.</p> <p>(C) The owner of an owner-occupied transient residential use structure must own the land on which the structure is located.</p> <p>(D) The owner must obtain a license to operate an owner-occupied transient residential use structure. The license must be renewed annually. The City Manager or his or her designee shall have the authority to impose additional standards and/or conditions on these licenses as necessary to achieve the objectives of this Section and other applicable provisions of Code.</p> <p>(E) The owner of an owner-occupied transient rental must vacate the premises during the term of the rental. In the event the owner does not vacate the premises during a transient rental, the rental shall be deemed an unlicensed bed and breakfast use and the applicable Code and remedies shall apply.</p> <p>(F) Concurrent transient rentals of any or all structures on the lot of an owner-occupied transient rental are prohibited.</p> <p>(G) An owner-occupied transient residential use is limited to no more than two separate, non-concurrent rentals in a calendar year and with a combined duration of no more than 30 days. There is not a limit on the number of nontransient, non-concurrent rentals exceeding 30 days each (other than that the owner must maintain the property as his or her residence), and these nontransient rentals do not count toward the two transient rental limit, or the 30 day combined duration limit, in a calendar year.</p> <p>(H) An owner-occupied transient residential use must be located in the principal residential structure on the lot. Transient (30 days or less) rental of any other structure on the lot, not in conjunction with the rental of the principal residential structure, is prohibited unless allowed elsewhere in Code as a commercial hotel/motel use for the lot.</p> <p>(I) A house number, visible from the street, shall be maintained.</p> <p>(J) Meal service and/or the provision of food and/or beverages are prohibited.</p> <p>(K) A register of guests must be maintained.</p> <p>(L) The owner of an owner-occupied transient rental shall furnish the name, address, and telephone number(s) of a local contact person on the license application and made available for public review. The license holder shall promptly notify the code official of any change in the local contact person's address or telephone number. The local contact person shall be available 24 hours a day to respond to tenant and neighborhood questions or concerns and to otherwise be responsible for assuring that the transient rental unit complies with the requirements of the license issued and the provisions of this Section and other applicable provisions of Code.</p> <p>(M) The owner or owner's agent shall display on the exterior of an owner-occupied transient rental a notice provided by the City containing a 24-hour 7 day phone number for the contact person responsible for the facility to take complaints regarding its operation. The exterior display will also contain the number of bedrooms, maximum number of overnight occupants permitted to stay in the unit, and the maximum number of vehicles for overnight occupants. The notice shall be in plain view of the general public and/or common areas and shall be maintained in good condition at all times.</p> <p>(N) Noise or other disturbance outside the short term rental unit is prohibited</p>	<p>Additional standards clause from Encinitas, CA ordinance Chapter 9.38</p> <p>House # clause from Ordinance #69 from Tillamook County, OR</p> <p>Contact person clause from Monterey County, CA zoning ordinance Title 21</p> <p>Exterior display clause from Encinitas, CA ordinance Chapter 9.38</p>



OOTR Amendments	Source Notes
<p>after 10:00 pm. This includes, but is not limited to, swimming pools, hot tubs, decks, portals, porches, balconies, or patios. All occupants of an owner-occupied transient rental shall be informed in writing by the owner or owner's agent of relevant City ordinances including, but not limited to, the nuisance, noise, and water conservation ordinances.</p> <p>(O) The owner of an owner-occupied transient rental shall use best efforts to insure that the occupants and/or guests do not create unreasonable noise or disturbances, engage in disorderly conduct, or violate provisions of City Code or any applicable law pertaining to noise, disorderly conduct, overcrowding, the consumption of alcohol, or the use of illegal drugs. Upon receipt of a complaint, the owner, owner's agent, or contact person shall attempt within 20 minutes to contact the occupants of an owner-occupied transient rental by phone or in person concerning the conduct of an occupant, and within 24 hours of the initial call use best efforts to prevent the recurrence of such conduct by the occupants and to take corrective action to address any violation. Failure to respond in a timely manner is grounds for immediate eviction of the occupants of the owner-occupied transient rental by the police. It is not intended that the property owner, local agent, or contact person act as a peace officer or place himself or herself in an at-risk situation.</p> <p>(P) A person may not structurally alter the exterior of an owner-occupied transient residential use structure to change the existing residential character of the structure.</p> <p>(Q) Each owner-occupied transient residential use structure must comply with this section and all other applicable Code requirements.</p> <p><b>25-2-790 OCCUPANCY LIMITS</b></p> <p>(A) The number of occupants of an owner-occupied transient rental shall not exceed the lesser of:</p> <ol style="list-style-type: none"> <li>(1) the limits set by Section 25-2-511 (<i>Dwelling Unit Occupancy Limit</i>) for the entire property and for each residential unit on the property, or</li> <li>(2) two times the number of parking spaces on the property plus, only if available, one parking space directly in front of the property on the street.</li> </ol>	<p>Noise clause from the Short Term Rental Ordinance of the City of Santa Fe, NM</p> <p>Complaint clause from the Short Term Rental Ordinance of the City of Santa Fe, NM</p> <p>Complaint clause from Encinitas, CA ordinance Chapter 9.38</p> <p>Complaint clause from Ordinance #69 from Tillamook County, OR</p>
<p><b>25-2-791 PARKING REQUIREMENTS</b></p> <p>(A) Pervious pavers may be used as driveway and parking surface materials within the property boundaries.</p> <p>(B) Not more than 25 percent of the parking surface may be constructed of gravel.</p> <p>(C) A guest parking space is not permitted in the front yard of an owner-occupied transient residential use structure.</p> <p>(D) At least one parking space shall be available on the property for use by occupants of the owner-occupied transient rental.</p> <p>(E) The property owner shall limit the number of vehicles of overnight occupants to the number designated in the license which shall not exceed the number of designated on-site parking spaces plus one. All designated on-site parking spaces shall be made available for the vehicles of occupants of an owner-occupied transient rental.</p> <p>(F) Occupants shall not park recreational vehicles on site or on the street of an owner-occupied transient rental.</p>	<p>Parking clause from Encinitas, CA ordinance Chapter 9.38</p>

OOTR Amendments	Source Notes
<p><b>25-2-792 SOLID WASTE MANAGEMENT.</b></p> <p>Trash and refuse from an owner-occupied transient rental shall not be left or stored within public view except from sunset of the day prior to trash pick-up until up to midnight on the day designated for trash pick-up. All trash will be in approved receptacles.</p>	<p>Garbage clause from Encinitas, CA ordinance Chapter 9.38</p>
<p><b>25-2-793 OCCUPANT SAFETY AND WELFARE.</b></p> <p>(A) An owner-occupied transient rental shall comply with all regulations insuring the safety, health, and welfare of occupants and adjacent neighbors including but not limited to:</p> <ol style="list-style-type: none"> <li>(1) At least one functioning fire extinguisher.</li> <li>(2) A properly maintained smoke detector in each sleeping area, outside each sleeping area, and in each additional story and basement without a sleeping area.</li> <li>(3) At least one operable emergency escape and rescue opening for each sleeping area.</li> </ol>	<p>Safety clauses from Ordinance #69 from Tillamook County, OR</p>
<p><b>25-2-794 INSURANCE</b></p> <p>The owner of an owner-occupied transient rental shall maintain adequate property insurance coverage for the rental unit. Proof of insurance shall be required at time of license issuance and such other times as may be requested by the City.</p>	<p>Insurance clause from the Short Term Rental Ordinance of the City of Santa Fe, NM</p>
<p><b>25-2-795 CERTAIN ADVERTISING PROHIBITED.</b></p> <p>(A) Advertising the street address of an owner-occupied transient rental through signs, billboards, television, radio, newspapers, or Internet is prohibited.</p> <p>(B) Availability of an owner-occupied transient rental unit to the public shall not be advertised on site.</p>	<p>Availability clause from Monterey County, CA zoning ordinance Title 21</p>
<p><b>25-2-796 RECORDS AVAILABILITY</b></p> <p>The owner or owner's agent of an owner-occupied transient rental shall make available to the City for its inspection all records relating to the operation of the owner-occupied transient rental in order to determine compliance with all applicable Codes.</p>	<p>Records clause from the Short Term Rental Ordinance of the City of Santa Fe, NM</p>
<p><b>25-2-797 RENTAL OF AN OWNER-OCCUPIED TRANSIENT RESIDENTIAL USE FACILITY FOR GATHERINGS.</b></p> <p>(A) The use of an owner-occupied transient residential use facility as a rented site for a gathering, including a wedding, is a conditional use.</p> <p>(B) A conditional use permit may be approved only if:</p> <ol style="list-style-type: none"> <li>(1) the owner-occupied transient residential use structure is located in a multifamily residence (limited density) or less restrictive base district, and</li> <li>(2) a certificate of occupancy has been issued that authorizes the use of the site for a gathering.</li> </ol> <p>(C) The maximum number of attendees at a gathering held under this section equals four times the total of the number of parking spaces on the property that are not required for other uses on the property plus two spaces on the street.</p> <p>(D) Amplified live outdoor music is prohibited at a gathering.</p> <p>(E) A gathering must end at 9:00 p.m. on Sunday through Thursday and at 10:30</p>	

OOTR Amendments	Source Notes
<p>p.m. on Friday and Saturday.</p> <p>(F) The Land Use Commission may not approve an increase of the maximum number of attendees, authorize amplified live outdoor music, or extend the hours of operation through the conditional use process.</p> <p>(G) The Land Use Commission may reduce the hours of operation.</p>	
<p>25-12-213 LOCAL AMENDMENTS TO THE INTERNATIONAL PROPERTY MAINTENANCE CODE.</p> <p>CHAPTER 13 HOTEL, BOARDING HOUSE, ROOMING HOUSE, <del>OWNER-OCCUPIED TRANSIENT RENTAL</del>, AND BED AND BREAKFAST ESTABLISHMENT REGULATIONS</p> <p>1301 DEFINITIONS</p> <p>The following words and terms shall, for the purposes of this chapter, have the meanings shown herein.</p> <p><b>BED AND BREAKFAST.</b> The use of an owner-occupied single-family residential structure to provide rooms for temporary lodging for overnight guests in return for compensation.</p> <p><b>BOARDING HOUSE.</b> A building other than a hotel, where lodging and meals are provided for more than six unrelated persons in return for compensation. When used in this chapter, the term Boarding House includes a transient boarding house.</p> <p><b>HOTEL/MOTEL.</b> A building or a part of a building, in which there are guest rooms, rooming units, or apartments which may be rented on a daily basis and are used primarily for transient occupancy, and for which desk service is provided. In addition, one or more of the following services may be provided: maid, telephone, bellboy, or furnishing of linen. When used in this chapter, the term hotel includes a motel.</p> <p><del><b>OWNER-OCCUPIED TRANSIENT RENTAL.</b> The unsupervised use of an owner-occupied single-family residential structure to provide furnished accommodations for overnight guests for no more than 30 days in a calendar year in return for compensation which may include barter and exchange.</del></p> <p><b>ROOMING HOUSE.</b> A building, other than a hotel, where lodging for more than six unrelated persons is provided without meals in return for compensation.</p> <p>1302 INSPECTIONS</p> <p>The code official shall make inspections to determine the condition of boarding houses, hotels, rooming houses, <del>owner-occupied transient rental</del>, and bed and breakfast establishments located within the City, to ensure compliance with this chapter and other applicable laws. For the purpose of making inspections, the code official or the code official's representative may enter, examine, and survey, at all reasonable times, all buildings, dwelling units, guest rooms, and premises on presentation of the proper credentials. The owner or operator of a boarding house, hotel, rooming house, <del>owner-occupied transient rental</del>, or bed and breakfast establishment, or the person in charge, shall give the code official free access to the building, dwelling unit, guest room and its premises, at all reasonable times, for the purpose of inspection, examination, and survey.</p> <p>1303 LICENSES AND PERMITS REQUIRED</p> <p>No person may operate a boarding house, hotel, rooming house, <del>owner-occupied transient rental</del>, or bed and breakfast establishment unless a license for the operation, in the name of the operator and for the specific dwelling used, has been issued by the code official and is currently valid and in good standing. Unless specifically exempted by the provisions of Chapter 10-3 (Food and Food Handlers) of the City Code, each boarding house and bed and breakfast establishment is required to have a permit as a food service establishment issued by the Health Authority.</p>	<p>Adds OOTR to the existing regulations in Code for hotel, boarding house, rooming house, and bed and breakfast</p> <p>This definition of an OOTR is based on the definition above of a bed and breakfast, but also regulates short-term home exchanges or swaps</p>

OOTR Amendments	Source Notes
<p><b>1304 LEASING OR RENTING ROOMS IN AN UNLICENSED HOTEL, BOARDING HOUSE, ROOMING HOUSE, OWNER-OCCUPIED TRANSIENT RENTAL, OR BED AND BREAKFAST ESTABLISHMENT IS AN OFFENSE</b></p> <p>An owner, manager, or person in control of a hotel, boarding house, rooming house, owner-occupied transient rental, or bed and breakfast establishment commits an offense if the owner or person leases, rents or otherwise induces occupancy of a room in a hotel, boarding house, rooming house, owner-occupied transient rental, or bed and breakfast establishment which does not have a valid license issued and displayed as required by this chapter.</p> <p>Each day that an owner, manager, or person in control of the property leases, rents or otherwise induces occupancy of a room in a hotel, boarding house, rooming house, owner-occupied transient rental, or bed and breakfast establishment which does not have a valid license issued and displayed as required by this chapter is a separate occurrence. An offense under this section is a class C misdemeanor, punishable by a fine not to exceed \$500 per offense, per occurrence, unless proof of a culpable mental state is proven. If proof of a culpable mental state is demonstrated, an offense under this section is punishable by a fine not to exceed \$2000 per occurrence.</p> <p>Operation of an owner-occupied transient rental without a license subjects the occupants of the property to immediate eviction by the police.</p> <p><b>1305 APPLICATION</b></p> <p>An application for a license required by this chapter must be in writing and submitted to the code official.</p> <p><b>1306 FEE</b></p> <p>Each application for a rooming house, hotel, boarding house, owner-occupied transient rental, or bed and breakfast establishment license must be accompanied by the payment of a fee in an amount established by separate ordinance, to be prorated on a quarterly basis.</p> <p><b>1307 ISSUANCE</b></p> <p>A boarding house, hotel, rooming house, owner-occupied transient rental, or bed and breakfast establishment license shall be issued by the code official after the code official determines that the owner or operator has complied with all applicable ordinances and rules. A license shall not be issued by the code official for any applicant or location in the absence of proof of the applicant or location's substantial compliance with all applicable local hotel occupancy tax rules and regulations. A license shall not be issued by the code official for any applicant or an owner-occupied transient rental without written acknowledgement by the applicant of the rental term limits of no more than two separate transient rentals in a calendar year and with a combined duration of no more than 30 days.</p> <p><b>1308 LICENSE SUSPENSION</b></p> <p>Whenever the code official finds on inspection of the physical premises or review of applicable records of any boarding house, hotel, rooming house, owner-occupied transient rental, or bed and breakfast establishment that conditions or practices exist that violate any provision of the International Property Maintenance Code, City Code, or any rule or regulation adopted under this code, the code official shall give written notice to the owner of the property and the operator of the boarding house, hotel, rooming house, owner-occupied transient rental, or bed and breakfast establishment that unless the violations are corrected by an identified deadline, the boarding house, hotel, rooming house, owner-occupied transient rental, or bed and breakfast establishment license shall be suspended. At the end of the time provided for correction of the violation(s), the code official shall re-inspect the location or records of the boarding house, hotel, rooming house, owner-occupied transient rental, or</p>	<p>Eviction clause from Encinitas, CA ordinance Chapter 9.38</p> <p>OOTR license holders are informed of the Hotel Occupancy Tax requirements and rental term limits at the time of issuance</p> <p>This section also handles the case where an OOTR owner exceeds the two rental/combined total 30 day limit per calendar year</p>



OOTR Amendments	Source Notes
<p>bed and breakfast establishment and, if the conditions or practices have not been corrected, shall suspend the license and give written notice to the licensee that the license has been suspended. On receipt of notice of suspension, the licensee shall immediately stop operation of the boarding house, hotel, <del>owner-occupied transient rental</del>, rooming house, or bed and breakfast establishment, and no person may occupy for sleeping or living purposes any rooming unit therein. The notice required by this subsection shall be served in accordance with the notice provisions of applicable law.</p> <p><b>1309 APPEAL FROM LICENSE SUSPENSION OR DENIAL</b></p> <p>The following actions of the code official may be appealed to the Building and Standards Commission as provided in this Code:</p> <ol style="list-style-type: none"> <li>1. the denial of an application for a license to operate a boarding house, hotel, rooming house, <del>owner-occupied transient rental</del>, or bed and breakfast establishment;</li> <li>2. the suspension of a license to operate a boarding house, hotel, rooming house, <del>owner-occupied transient rental</del>, or bed and breakfast establishment;</li> <li>3. the issuance of a notice that a license to operate a boarding house, hotel, rooming house, <del>owner-occupied transient rental</del>, or bed and breakfast establishment will be suspended unless existing conditions or practices are corrected.</li> </ol> <p>An appeal filed under this section must be filed with the code official no later than the 20th day following the date on which the license was denied or suspended, or notice of violation was received. The appeal must be set for hearing before the Commission on the next available agenda date following receipt of the appeal and must be heard following setting on the scheduled agenda if a quorum is present at the hearing, unless the appellant requests a later date and waives the scheduled hearing.</p> <p><b>1310 EXPIRATION</b></p> <p>Each boarding house, hotel, rooming house, <del>owner-occupied transient rental</del>, and bed and breakfast establishment license expires at the end of the calendar year for which it is issued, unless suspended or revoked as provided in this chapter.</p> <p><b>1311 TRANSFER AND NOTICE ON SALE OF PREMISES</b></p> <p>A license issued under this chapter is not transferable. Every person holding a license shall give written notice to the code official no later than 10 days before the conveyance, transfer, or any other disposition of the ownership of, interest in, or control of any boarding house, hotel, rooming house, <del>owner-occupied transient rental</del>, or bed and breakfast establishment. The notice must include the name and address of the person succeeding to the ownership or control of the boarding house, hotel, rooming house, <del>owner-occupied transient rental</del>, or bed and breakfast establishment.</p> <p><b>1312 DISPLAY</b></p> <p>The license required by this chapter must be displayed at all times in a conspicuous place designated by the code official within each boarding house, hotel, rooming house, or bed and breakfast establishment, <del>with the exception of an owner-occupied transient rental where the license required by this chapter shall be displayed for the week before, during, and the week after each transient rental of the property.</del></p>	

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. Your comments should include the name of the board or commission, or Council; the scheduled date of the public hearing; the Case Number; and the contact person listed on the notice.

Case Number: C15-2011-0038 - (6619) 6621 Argentia Road  
Contact: Susan Walker, 512-974-2202  
Public Hearing: Board of Adjustment, April 27th, 2011

MARY OWENS  
Your Name (please print)

☐ I am in favor  
☒ I object

6606 ARGENTIA RD.  
Your address(es) affected by this application

Mary Owens  
Signature

Date

Daytime Telephone: (512) 454-9339

Comments: I do not think a single family residence should be used for the purpose of short-term rentals

If you use this form to comment, it may be returned to:  
City of Austin-Planning & Development Review Department/ 1st Floor  
Susan Walker  
P. O. Box 1088  
Austin, TX 78767-1088

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Case Number: C15-2011-0038 - (6619) 6621 Argentia Road  
Contact: Susan Walker, 512-974-2202  
Public Hearing: Board of Adjustment, April 27th, 2011

Dana Ross Martin  
Your Name (please print)

☐ I am in favor  
☒ I object

6614 Argentia Rd Austin, TX 78757  
Your address(es) affected by this application

Dana Ross Martin  
Signature

Date

Daytime Telephone: 512 459-0916

Comments:

I'd like to own a Vacation Rental Property. The catch though is WHERE the property is located, that is the issue.

In the middle of a well-established residential neighborhood is not the best place (location) for this type of venue.

If you use this form to comment, it may be returned to:  
City of Austin-Planning & Development Review Department/ 1st Floor  
Susan Walker  
P. O. Box 1088  
Austin, TX 78767-1088

## PUBLIC HEARING INFORMATION

Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak **FOR** or **AGAINST** the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During a public hearing, the board or commission may postpone or continue an application's hearing to a later date, or recommend approval or denial of the application. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

A board or commission's decision may be appealed by a person with standing to appeal, or an interested party that is identified as a person who can appeal the decision. The body holding a public hearing on an appeal will determine whether a person has standing to appeal the decision.

An interested party is defined as a person who is the applicant or record owner of the subject property, or who communicates an interest to a board or commission by:

- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern (*it may be delivered to the contact person listed on a notice*); or
- appearing and speaking for the record at the public hearing; and:
- occupies a primary residence that is within 500 feet of the subject property or proposed development;
- is the record owner of property within 500 feet of the subject property or proposed development; or
- is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

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**Case Number: C15-2011-0038 – (6619) 6621 Argentia Road**  
**Contact: Susan Walker, 512-974-2202**

**Public Hearing: Board of Adjustment, April 27th, 2011**

Row Helton  
 Your Name (please print)

☐ I am in favor  
☒ I object

3102 BOADEN RD 78757

Your address(es) affected by this application

Row Helton

Signature

4/18/2011  
 Date

Daytime Telephone: 512-306-1212

Comments:

We think about-turn rentals  
are detrimental to the neighborhood.

**If you use this form to comment, it may be returned to:**

City of Austin-Planning & Development Review Department/ 1st Floor  
 Susan Walker  
 P. O. Box 1088  
 Austin, TX 78767-1088

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Contact: Susan Walker, 512-974-2202  
Public Hearing: Board of Adjustment, April 27th, 2011

Foster Helen Marie

Your Name (please print)

6605 Argentia Road

Your address(es) affected by this application

Helen Foster Short 4/21/11

Signature

Date

Daytime Telephone: 512-288-0647

Comments: This is a residential

neighborhood. Case #s: C15-2011-0037 & 38  
are a commercial or business  
proposition. This residential  
neighborhood should have long-  
term resident-tenant background  
checked; not short-term transient  
occupants (not background checked).  
(over please)

If you use this form to comment, it may be returned to:

City of Austin-Planning & Development Review Department/ 1st Floor  
Susan Walker  
P. O. Box 1088  
Austin, TX 78767-1088

## PUBLIC HEARING INFORMATION

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- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern (it may be delivered to the contact person listed on a notice); or
- appearing and speaking for the record at the public hearing; and:
- occupies a primary residence that is within 500 feet of the subject property or proposed development;
- is the record owner of property within 500 feet of the subject property or proposed development; or
- is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

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**Case Number: C15-2011-0038 – (6619) 6621 Argentia Road**  
**Contact: Susan Walker, 512-974-2202**

**Public Hearing: Board of Adjustment, April 27th, 2011**

Bill Wallace

Your Name (please print)

6702 Lexington Road

Your address(es) affected by this application

John Taylor

Signature

Daytime Telephone: 454-9882

Date

Comments: The house at 6621 Argentia is

not being used as a single family dwelling

It is advertised on the website

www.homesaway.com/vacation rental/proceed

as a rental property for periods as short

as 2 days. The house is commonly used

for loud parties - we've called the police

as late as 2 AM. One tenant started a

fire there... This usage has been a nuisance

If you use this form to comment, it may be returned to: neighbors@ci.austin.tx.us

City of Austin-Planning & Development Review Department 1st Floor

Susan Walker

P. O. Box 1088

Austin, TX 78767-1088

I am against any determination

that will allow the property

to be used as a hotel.

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Case Number: C15-2011-0038 - (6619) 6621 Argentinia Road  
Contact: Susan Walker, 512-974-2202

Public Hearing: Board of Adjustment, April 27th, 2011

*Richard Burelli*

Your Name (please print)

6617 ARGENTINIA RD, -78757

☐ I am in favor  
☐ I object

Your Address(es) notified by this Application

*Richard Burelli*

4-22-11

Signature

Date

Daytime Telephone: 512-507-1772

Comments: I BELIEVE SHARTEER KENNEL (FARLESS  
THAN 30 MINS) ON A REGULAR BASIS. ADDITIONAL  
AS SUCH IS NOT IN COMPLIANCE WITH SINCE  
FAMILY ZONING AND IS A HOTEL USE.

If you use this form to comment, it may be returned to:

City of Austin-Planning & Development Review Department/ 1st Floor  
Susan Walker  
P. O. Box 1088  
Austin, TX 78767-1088

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Case Number: C15-2011-0038 - (6619) 6621 Argenta Road

Contact: Susan Walker, 512-974-2202

Public Hearing: Board of Adjustment, April 27th, 2011

Richard Balthaile

Your Name (please print)

3100 Borden Road, Austin 78757

Your address(es) affected by this application

[Signature]

Signature

4-25-11

Date

Daytime Telephone: 4521657

Comments: Please see attached letter.

Thanks.

☒ I am in favor  
☐ I object

april

If you use this form to comment, it may be returned to:

City of Austin-Planning & Development Review Department/ 1st Floor  
Susan Walker  
P. O. Box 1088  
Austin, TX 78767-1088

April 25, 2011

Board of Adjustment, City of Austin

c/o Susan Walker

Planning &amp; Development Review Department

P.O. Box 1088

Austin, TX 78767-1088

Re: Case C15-2011-0038

Public hearing April 27, 2011

Dear Members, Board of Adjustment

I am writing regarding the property at 6621 Argentea Road in Austin and the related appeal of the Planning and Development Review Director's ruling before the Board. I reside very near that property. Thank you for your time and consideration.

I am in favor of the appeal against the Director's determination that a residential structure rented for a short time should be classified as single family residential use.

To parse this into simplistic facts and issues, and not being an attorney or expert on city and state code, I will only briefly cover limited information here. I will basically address my comments to two issues: (1) the legality of the owners of the property renting it as they have done and, since there is apparently some ambiguity to the code or to the ruling or interpretation by the city staff (and whether they find its current use is legal), the (2) safety and character of the neighborhood.

#### A. Legality -- How Are The Owners Allowed To Use The Property As It is Currently Being Used?

6621 Argentea Road is zoned as Single Family Residential-2. According to the Austin Land Development Code, the only two permitted uses of the zoned Single Family Residential-2 property are Single Family Residential and Bed And Breakfast Group 1. There are no other residential uses permitted, and there are no other commercial uses permitted. There is one conditional use allowed: "historic."

25-2-3 states that residential uses include the occupancy of living accommodations on a nontransient basis. *The term "nontransient" in no way describes the people who have temporarily -- for a couple of days or slightly more at a time -- lived in this property over recent months.* Most renters in the property have stayed far, far less than -- for example -- 28 consecutive days, which under the Texas Health and Safety Code (792.001) is the delineation point for the State's definition of a hotel, motel, tourist home, lodging house, inn, etc... The International Building Code (2009, Section 310.2) defines transient as occupancy for not more than 30 days.

For more complete information, since the property owners no doubt have been keeping financial and lodging records for tax purposes as required by the city and state, they would probably be happy to share the "incidences of lengths of rental" (for lack of a better term) with the Board as it considers these appeals. I respect their privacy, however, if requested, in fairness and good faith (and to support their side) perhaps they would at least inform Board members as to the numbers of renters who stayed 1-5 days, 6-10 days, etc. Based on observation, I predict that -- prior to last month -- zero is likely the number of guests staying 28 consecutive days. As Austin apparently struggles to define the meaning of the word "nontransient" (I'm told that is part of the question to resolve on this issue), this wealth of real information should help everyone. So, if it is not used for a single person(s) or family who is nontransient, then is 6621 Argentea a



bed and breakfast?

Under 25-2-3 Residential Uses if it is a money-earning (yes, a "commercial") property (and it is indeed owned in order to earn money for the owners), one requirement specifies that the owner must reside in the bed and breakfast residential use structure or in another residential structure on the lot on which the structure is located. Clearly, these owners do NOT reside at 6621 Argenta, and one told me directly that they in fact have no plans to do so. I cannot see any ambiguity here — the owners do not live in the property and are in violation of 25-2-3 if they claim the status of B&B Group 1.

This is only one of several inadequacies present in any claim of B&B Group 1. Other issues (do they have a license as required?, are they paying all taxes?...) exist, and will likely be covered by other parties in this appeal.

To inform these and future discussions (and simply to present the interpretation/definition from professionals and stakeholders in the hospitality industry), the 2009 International Property Maintenance Code defines a Bed and Breakfast as the use of owner occupied single-family residential structure to provide rooms for temporary lodging for overnight guests in return for compensation.

6621 Argenta is clearly NOT being operated as a Single Family Residential or Bed And Breakfast Group 1 property under the city code. There are for the most part no commercial uses under SFR-2. 6621 Argenta is being operated illegally as a commercial property.

#### **B. Safety — If Ambiguity Truly Exists Under City Code And Rules Regarding How This Property Is Operating, Then Safety Should Be The Over-Riding Factor At This Point (And Until Code Revisions And Clarifications Are Enacted)**

Allandale and other neighborhoods in Austin seek a standard of living that includes safety and caring. While the traditional concept of a bed and breakfast under the city code at least has a minimal level of "safety and caring" based on the underlying notion that the owners are present and care for the house and likely would not simply allow or tolerate "just anyone" in their home, the commercial use of a residential property does not hold those same safeguards and attention to property and the neighborhood.

There are many children living in the residential homes around this commercial property. Consequently, there is a certain level of risk in being near a property where there can be almost a near-continuous turnover of "guests," with minimal assessment or requirements as to their "quality." That is, virtually no quality control exists at 6621 Argenta really — someone scans a credit card at the "Homeway" website, and if their credit goes through, they're in! At minimum with a B&B, the owners are on-site and can observe, ask questions, and make adjustments — if the person is not a reasonable or trustworthy client, the owners can ask them to leave or at least watch them closely.


Some (or probably most) transient dwellers have no interest or consideration for neighbors around the property, as anecdotal evidence at 6621 Argenta and other rental properties in Austin would support. Typically, the property is not as well kept by the owner as when there are some permanent residents.

Other negative aspects should be considered. Indeed, a few months ago transient renters (probably "in for the weekend") did actually cause a fire at the 6621 Argenta commercial property, and significant burn damage occurred. Under the current (April 2011) drought conditions, this might have been substantially worse and possibly tragic; to compound the situation, houses in this cul-de-sac are not very far apart. (Note: Is there a stricter fire code, and other safety requirements, for commercial properties? Were the commercial code and requirements, or are

they now, being met by the owners [and is the city monitoring these Austin properties]? Is the electrical circuit box well-kept and adequate for who-knows-how-many occupants they may rent to, or how many additional guests their tenants may have stay with them? Is the property safe for the renters, e.g., are there fire and smoke detectors present as required in motels? [thankfully, the child whose room was in flames woke up and alerted everyone when 6211 Argenta was on fire last year, everyone else was still deep in sleep]]

Please help us keep the city safe. Thank you very much for your careful analysis and consideration of this important matter for Austin neighborhoods and our children.

Sincerely,

  
Richard M. Battalle  
3100 Borden Road  
Austin, TX 78757

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Case Number: C15-2011-0038 -- (6619) 6621 Argentinia Road  
Contact: Susan Walker, 512-974-2202 fax 974-2934  
Public Hearing: Board of Adjustment, April 27th, 2011

BERNARDO FERNANDEZ  
Your Name (please print)

☒ I am in favor  
☐ I object

BERNARDO FERNANDEZ  
Your address(es) affected by this application

6614 Lexington Rd  
Bernardo Fernandez  
Signature

4-27-11  
Date

Daytime Telephone: \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you use this form to comment, it may be returned to:  
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Susan Walker  
P. O. Box 1088  
Austin, TX 78767-1088

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Contact: Susan Walker, 512-974-2202 fax 974-2934  
Public Hearing: Board of Adjustment, April 27th, 2011

Your Name (please print)

6608 Argentia Ave.

Your address(es) affected by this application

6608 Argentia Ave.

Signature

Daytime Telephone:

Comments:

Date

☒ I am in favor  
☐ I object

I am in favor of the appeal

4/27/11

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Austin, TX 78767-1088

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**Contact:** Susan Walker, 512-974-2202 *fax 974-2934*  
**Public Hearing:** Board of Adjustment, April 27th, 2011

*Kathryn Bragg*  
 Your Name (please print)

☒ I am in favor  
☐ I object

*6621 Lexington Rd*  
 Your address(es) affected by this application

*Kathryn Bragg*  
 Signature

*4/29/11*  
 Date

Daytime Telephone: *512-665-7897*

Comments:

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Contact: Susan Walker, 512-974-2202 fax 974-2934  
Public Hearing: Board of Adjustment, April 27th, 2011

PAT SCOTT  
Your Name (please print)

☒ I am in favor  
☐ I object

6605 LEXINGTON RD  
Your address(es) affected by this application

I am in favor  
of the appeal

4/27/2011  
Date

*[Signature]*  
Signature

Daytime Telephone: 512-985-5081

Comments:

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Contact: Susan Walker, 512-974-2202 fax 974-2934  
Public Hearing: Board of Adjustment, April 27th, 2011

Hilton Moore  
Your Name (please print)

☒ I am in favor  
☐ I object

6606 Lexington Rd  
Your address (if affected by this application) → I am in favor of the appeal

4/27/11  
Date

Signature

Daytime Telephone: 453.5753

Comments:

If you use this form to comment, it may be returned to:  
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Case Number: C15-2011-0038 - (6619) 6621 Argentina Road  
Contact: Susan Walker, 512-974-2202 *fax 974-2934*  
Public Hearing: Board of Adjustment, April 27th, 2011

*Sara Ross*  
Your Name (please print)

☒ I am in favor  
☐ I object ~~appeal~~

*6705 Lexington Rd*

Your address(es) affected by this application

*Sara E Ross*

Signature

*Apr 27, 2011*

Date

Daytime Telephone: *512 451-1114*

Comments:

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Austin, TX 78767-1088



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**Case Number:** C15-2011-0038 -- (6619) 6621 Argentia Road  
**Contact:** Susan Walker, 512-974-2202 fax 974-2934  
**Public Hearing:** Board of Adjustment, April 27th, 2011

CAROLINE KUTSEN  
 Your Name (please print)

☒ I am in favor of the appeal  
☐ I object to the appeal

6803 Lexington  
 Your address(es) affected by this application

Caroline Kutsen  
 Signature

Date

Daytime Telephone: 453 6406

Comments:

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**If you use this form to comment, it may be returned to:**

City of Austin-Planning & Development Review Department/ 1st Floor  
 Susan Walker  
 P. O. Box 1088  
 Austin, TX 78767-1088

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Contact: Susan Walker, 512-974-2202 *fax 974-2934*  
Public Hearing: Board of Adjustment, April 27th, 2011

*Karen Moore*  
Your Name (please print)

☒ I am in favor  
☐ I object ~~appeal~~

*6606 Lexington Rd*  
Your address(es) affected by this application

*K Moore*  
Signature

*4/27/11*  
Date

Daytime Telephone: *473.5753*

Comments:

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Contact: Susan Walker, 512-974-2202 fax 974-2934  
Public Hearing: Board of Adjustment, April 27th, 2011

Diana Davis  
Your Name (please print)

☒ I am in favor  
☐ I object ~~appeal~~

6603 Lexington Rd 78157 → I am in favor  
Your address(es) affected by this application of the appeal

[Signature]  
Signature 4-27-11  
Date

Daytime Telephone: (512) 459-3945

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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Contact: Susan Walker, 512-974-2202 fax 974-2934  
Public Hearing: Board of Adjustment, April 27th, 2011

Robert H. Davis  
Your Name (please print)

☒ I am in favor  
☐ I object

6603 Lexington Rd  
Your address(es) affected by this application

of the appeal

4/27/11  
Date

Signature

Daytime Telephone: 459-3945

Comments: I would like to see a 6

month or 12 month lease.

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Austin, TX 78767-1088

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**Case Number: C15-2011-0038 -- (6619) 6621 Argentia Road**  
**Contact: Susan Walker, 512-974-2202**

**Public Hearing: Board of Adjustment, April 27th, 2011**

*Kevin Ford*

Your Name (please print)

*6621 Argentia Rd*

Your address(es) affected by this application

*Kevin Ford*

Signature

Daytime Telephone: \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

☒ I am in favor  
☐ I object

*Kevin Ford*

*4/27/2011*

Date

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**Contact: Susan Walker, 512-974-2202**

**Public Hearing: Board of Adjustment, April 27th, 2011**

Zone Rockenbaugh

*Your Name (please print)*

6616 Argentia Rd.

*Your address(es) affected by this application*

322 4/27/11

*Signature*

*Date*

Daytime Telephone: 512-567-7625

Comments: The clear reading of the code

would prohibit transient rentals under

every definition of transient with I could

find. If, as the city claims, transient

is meaningless, why is it included in the

code.

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 Contact: Susan Walker, 512-974-2202  
 Public Hearing: Board of Adjustment, April 27th, 2011

Melissa Clute

Your Name (please print)

6615 Argentinia Road

Your address(es) affected by this application

Melissa Clute

Signature

Daytime Telephone: 512 683 6367

Date

4/27/2011

Comments: I Support Ms. Keohane's  
and Alandale Neighborhood  
Association's Application to  
Board of Adjustment Interpretations

(This form does not clearly  
indicate which box to check

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Case Number: C15-2011-0038 - (6619) 6621 Argentia Road  
Contact: Susan Walker, 512-974-2202

Public Hearing: Board of Adjustment, April 27th, 2011

Tayron Tolley Cutter

Your Name (please print)

6613 Argentia Rd

Your address(es) affected by this application

*[Signature]*

Signature

Date

Daytime Telephone: 512-820-6486

4-27-11

Comments: I agree with the applicant that this property does not comply with the "single family residence" classification. This property is being rented out instead of being a commercial hotel operator with many unhappy consequences to our close-knit neighborhood.

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Case Number: C15-2011-0038 - (6619) 6621 Argentinia Road

Contact: Susan Walker, 512-974-2202

Public Hearing: Board of Adjustment, April 27th, 2011

MARY STRICKLAND

Your Name (please print)

6614 Argentinia Rd.

Your address(es) affected by this application

MARY STRICKLAND

Signature

4-24-2011

Date

Daytime Telephone (512) 322-9944

Comments: Unfamiliar cases and people resulting in increased 911 calls - Parent/Seniors re Strangers. Increased traffic - drivers unaware or unconcerned.

About Speed limits, childrens At Play sign just lost. Increased noise: residents property enjoy their vacation with a neg impact on neighborhood quality of life. Negative impact on property values that long term residents would hard to maintain.

Alendale Terrace Sec 2 - NOT A VACATION DESTINATION.

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**Case Number: C15-2011-0038 – (6619) 6621 Argentia Road**  
**Contact: Susan Walker, 512-974-2202**  
**Public Hearing: Board of Adjustment, April 27th, 2011**

M. G. MORGAN

*Your Name (please print)*

6610 JAMAICA CT. AUSTIN TX 78757

*Your address(es) affected by this application*

M. G. Morgan

*Signature*

4/25/11

*Date*

Daytime Telephone: 512-454-9876

Comments: I object to the appeal, since any house in this neighborhood, for whatever length of time it may be rented, should be defined as for single family residence only. There is no virtue in turning any such dwelling into an unregistered and unregulated flop-house

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